

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
05-CA-216482	03-12-2018

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer The George Washington University Hospital		b. Tel. No. (202)715-5087
		c. Cell No.
d. Address (street, city, state ZIP code) 900 23rd St NW, Washington, DC 20037-2342	e. Employer Representative Alicia Brill Assistant Director, Human Resources	f. Fax No. (202)715-4402
		g. e-Mail
		h. Dispute Location (City and State) Washington, DC
i. Type of Establishment (factory, nursing home, hotel) Hospital	j. Principal Product or Service Healthcare	k. Number of workers at dispute location 115

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

At all times during the last six months, the Employer has failed to bargain collectively and in good faith with 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region, by engaging in overall surface bargaining without any apparent intent on reaching a successor contract. This includes a continued refusal to meet more than twice a month while insisting that bargaining must occur only during the business day and piecemealing its proposals and counter proposals; maintaining a restrictive grievance/arbitration provision and no strike provision, while at the same time an expansive management rights clause in its contract proposals. It is also alleged that the negotiations at the table have been adversely affected by the Employer's announcement and implementation to unilaterally rescind dues checkoff and the payment for employee training programs

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region

4a. Address (street and number, city, state, and ZIP code) 611 N. Eutaw Street, Suite 320, Baltimore, MD 21201	4b. Tel. No. (410)332-1199
	4c. Cell No.
	4d. Fax No. (410)332-1291
	4e. e-Mail sgodoff@abato.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

SERVICE EMPLOYEES INTERNATIONAL UNION

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. (410)332-1199
By:  (signature of representative or person making charge)	Stephen Godoff Attorney Print Name and Title	Office, if any, Cell No.
Address: 611 N. Eutaw Street, Suite 320, Baltimore, MD 21201	Date: 03-12-2018	Fax No. (410)332-1291
		e-Mail sgodoff@abato.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

1-2195316941



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlrb.gov
Telephone: (410)962-2822
Fax: (410)962-2198



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March 14, 2018

Stephen Godoff, Esq.
1199 Service Employees International
Union, United Healthcare Workers East
MD/DC Region
611 N. Eutaw Street, Suite 320
Baltimore, MD 21201

Re: The George Washington University Hospital
Case 05-CA-216482

Dear Mr. Godoff:

The charge that you filed in this case on March 12, 2018 has been docketed as case number 05-CA-216482. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner Bisi Dean whose telephone number is (410) 962-0179. If this Board agent is not available, you may contact Resident Officer Mark B. Kalaris whose telephone number is (202) 208-3076.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you

March 14, 2018

fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean R. Marshall". The signature is fluid and cursive, with the first name "Sean" and last name "Marshall" clearly distinguishable.

Sean R. Marshall
Acting Regional Director

Enclosure: Copy of Charge



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlr.gov
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March 14, 2018

Ms. Alicia Brill
Assistant Director, Human Resources
The George Washington University Hospital
900 23rd Street, N.W.
Washington, DC 20037-2342

Re: The George Washington University Hospital
Case 05-CA-216482

Dear Ms. Brill:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

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Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board

March 14, 2018

agent. Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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March 14, 2018

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean R. Marshall". The signature is fluid and cursive, with the first name "Sean" and last name "Marshall" clearly distinguishable.

Sean R. Marshall
Acting Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME**CASE NUMBER**

05-CA-216482

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY**☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): ☐ CALENDAR YR ☐ 12 MONTHS or ☐ FISCAL YR (FY dates)**YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$ _____B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$ _____C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$ _____F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____H. **Gross Revenues** from all sales or performance of services (*Check the largest amount*):☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: _____**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?**☐ YES ☐ NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**THE GEORGE WASHINGTON UNIVERSITY
HOSPITAL**

Charged Party

and

**1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS
EAST, MD/DC REGION**

Charging Party

Case 05-CA-216482

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on March 14, 2018, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Ms. Alicia Brill
Assistant Director, Human Resources
The George Washington University Hospital
900 23rd Street, N.W.
Washington, DC 20037-2342

March 14, 2018

Date

Doni Graham, Designated Agent of NLRB

Name

/s/ Doni Graham

Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**FIRST AMENDED CHARGE AGAINST EMPLOYER****INSTRUCTIONS:**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
05-CA-216482	9-7-18

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer The George Washington University Hospital		b. Tel. No. (202)715-5087
		c. Cell No.
d. Address (street, city, state ZIP code) 900 23rd St NW, Washington, DC 20037-2342	e. Employer Representative Alicia Brill Assistant Director, Human Resources	f. Fax No. (202)715-4402
		g. e-Mail
		h. Dispute Location (City and State) Washington, D.C.
i. Type of Establishment (factory, nursing home, hotel) Hospital	j. Principal Product or Service Healthcare	k. Number of workers at dispute location 115

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

See Attachment

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region

4a. Address (street and number, city, state, and ZIP code)

611 N. Eutaw Street, Suite 320, Baltimore, MD 21201

4b. Tel. No.

4c. Cell No.

4d. Fax No.

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

SERVICE EMPLOYEES INTERNATIONAL UNION

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.

(410) 321-0990

Office, if any, Cell No.

(410) 627-3130

By:

(signature of representative or person making charge)

Stephen Godoff Attorney

Print Name and Title

Fax No.

(410) 321-1419

e-Mail

sgodoff@abato.com

Address: 611 N. Eutaw Street, Suite 320,
Baltimore, MD 21201

Date:

9/7/18

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

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ATTACHMENT TO FIRST AMENDED CHARGE 05-CA-216482

At all times within the last six months, the Employer, by its officers, agents and representatives, has failed to bargain in good faith with 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region, by engaging in overall surface bargaining, evidenced by the following unlawful conduct:

- Simultaneously maintaining and adhering to a restrictive grievance/arbitration procedure, no-strike provision and an expansive management rights clause in its contract proposals;
- The unilateral cessation of dues check-off; and
- Regressive bargaining with respect to its discipline and grievance/mediation proposals.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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Mobile App

September 10, 2018

Stephen Godoff, Esq.
Abato, Rubenstein & Abato, P.A.
809 Gleneagles Court, Suite 320
Baltimore, MD 21286-2230

Re: The George Washington University Hospital
Case 05-CA-216482

Dear Mr. Godoff:

We have docketed the first amended charge that you filed in this case.

Investigator: This charge is being investigated by Field Examiner Bisi Dean whose telephone number is (410)962-0179. If the agent is not available, you may contact Supervisory Field Examiner David Colangelo whose telephone number is (410)962-0180.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the first amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence

September 10, 2018

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Very truly yours,

/s/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure: Copy of first amended charge

cc: Stephen W. Godoff, Esq.
1199 Service Employees International
Union, United Healthcare Workers East,
MD/DC Region
611 N. Eutaw Street, Suite 320
Baltimore, MD 21201



UNITED STATES GOVERNMENT
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September 10, 2018

Steven M. Bernstein, Esq.
Michael S. Bohling, Esq.
Fisher & Phillips LLP
101 E. Kennedy Boulevard, Suite 2350
Tampa, FL 33602-5136

Reyburn W. Lominack, III, Esq.
Fisher Phillips, LLP
1320 Main Street, Suite 750
Columbia, SC 29201-3284

Re: The George Washington University Hospital
Case 05-CA-216482

Dear Mr. Bernstein, Mr. Bohling and Mr. Lominack:

Enclosed is a copy of the first amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Examiner Bisi Dean whose telephone number is (410)962-0179. If the agent is not available, you may contact Supervisory Field Examiner David Colangelo whose telephone number is (410)962-0180.

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Very truly yours,

/s/ Nancy Wilson

Nancy Wilson
Acting Regional Director

Enclosure: Copy of first amended charge

cc: Ms. Alicia Brill
Assistant Director, Human Resources
The George Washington University
Hospital
900 23rd Street, N.W.
Washington, DC 20037-2342

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**THE GEORGE WASHINGTON UNIVERSITY
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Charged Party

and

**1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS
EAST, MD/DC REGION**

Charging Party

Case 05-CA-216482

AFFIDAVIT OF SERVICE OF FIRST AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on September 10, 2018, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

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Assistant Director, Human Resources
The George Washington University Hospital
900 23rd Street, N.W.
Washington, DC 20037-2342

Steven M. Bernstein, Esq.
Michael S. Bohling, Esq.
Fisher & Phillips LLP
101 E. Kennedy Boulevard, Suite 2350
Tampa, FL 33602-5136

Reyburn W. Lominack, III, Esq.
Fisher Phillips, LLP
1320 Main Street, Suite 750
Columbia, SC 29201-3284

September 10, 2018

Date

Doni Graham, Designated Agent of NLRB

Name

/s/ Doni Graham

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

THE GEORGE WASHINGTON UNIVERSITY
HOSPITAL

and

Case 5-CA-216482

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region affiliated with Service Employees International Union (the Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that The George Washington University Hospital (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Charging Party on March 12, 2018, and a copy was served on Respondent by U.S. mail on March 14, 2018.

(b) The first amended charge in this proceeding was filed by the Charging Party on September 7, 2018, and a copy was served on Respondent by U.S. mail on September 10, 2018.

2. (a) At all material times, Respondent, which maintains an office and place of business in Washington, D.C. (Respondent's facility), has been owned jointly by Universal

Health Services and George Washington University, as general partners doing business as The George Washington University Hospital, and has been engaged in providing short-term acute medical care to the general public.

(b) In conducting its operations during the 12-month period ending August 31, 2018, Respondent derived gross revenues in excess of \$250,000.

(c) During the period of time described above in paragraph 2(b), Respondent purchased and received at Respondent's facility goods valued in excess of \$5,000 directly from points outside the District of Columbia.

(d) During the period of time described above in paragraph 2(b), Respondent has conducted its business operations, described above in paragraph 2(a), in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

(e) At all material times, Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act.

3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- | | | |
|--------------------|---|---|
| (a) Monique Duncan | - | Director, Environmental Services Department |
| (b) Katina Ford | - | Supervisor, Environmental Services Department |
| (c) Tracey Leonard | - | Senior Human Resources Generalist |

- (d) Makita Miller - Assistant Director for George Washington University
- (e) Jeanie Schmid - Human Resources Vice President/Corporate Universal Health Services Office
- (f) Robert Trump - Director, Food Services Department

5. At all material times, an Unnamed Agent held the positions of Respondent's Lead Negotiator and Counsel, and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

6. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and regular part-time employees of the Employer in the Environmental Services, Linen Services, Ambulatory Care Center and Food Services Departments of George Washington University Hospital.

(b) At all material times, Respondent has recognized the Charging Party as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from December 20, 2012 through December 19, 2016.

(c) At all material times, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

7. (a) At various times from about November 21, 2016 through the present date, Respondent and the Charging Party met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described above in paragraph 6(b).

(b) During the period of time described above in paragraph 7(a), Respondent bargained with no intention of reaching agreement by:

(1) simultaneously maintaining and adhering to bargaining proposals that provide the Unit with fewer rights than afforded to them without a collective-bargaining agreement, such as a restrictive grievance-arbitration procedure that does not include binding arbitration, a no-strike provision, and an expansive management's right clause;

(2) engaging in regressive bargaining by proposing that discharges be subject to the grievance-arbitration procedure, and then later proposing that the grievance procedure culminates in non-binding mediation; and

(3) failing or refusing to honor the dues-checkoff arrangements set forth in the agreement described above in paragraph 6(b).

(c) By its overall conduct, including the conduct described above in paragraph 7(b), Respondent has failed and refused to bargain in good faith with the Charging Party as the exclusive collective-bargaining representative of the Unit.

8. (a) Since about February 1, 2018, Respondent has failed and refused to honor the dues-checkoff arrangements set forth in the agreement described above in paragraph 6(b).

(b) The subjects set forth above in paragraph 8(a) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 8(a) without affording the Charging Party an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

9. By the conduct described above in paragraphs 7(b), 7(c), and 8, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

10. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

As part of the remedy for the unfair labor practices alleged above in paragraphs 7(b), 7(c), and 9, the General Counsel seeks an Order requiring Respondent to make whole: (1) the Charging Party for all costs and expenses incurred during negotiations; and (2) employee negotiators for any earnings and or leave lost while attending bargaining sessions. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before October 9, 2018, or postmarked on or before October 6, 2018.**

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users

that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on January 28, 2019, at 10:00 a.m., at the Board Hearing Room, Suite 6001, 1015 Half Street, SE, Washington, DC, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this

complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 25th day of September 2018.



Nancy Wilson, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

THE GEORGE WASHINGTON UNIVERSITY)	
HOSPITAL,)	
)	
and)	
)	CASE NO. 05-CA-216482
1199 SERVICE EMPLOYEES INTERNATIONAL)	
UNION, UNITED HEALTHCARE WORKERS)	
EAST, MD/DC REGION A/W SERVICE)	
EMPLOYEES INTERNATIONAL UNION.)	

**RESPONDENT GEORGE WASHINGTON UNIVERSITY HOSPITAL'S ANSWER
AND AFFIRMATIVE DEFENSES TO THE COMPLAINT**

Comes now Respondent GEORGE WASHINGTON UNIVERSITY HOSPITAL ("GWUH", "Respondent," or "the Hospital"), by and through undersigned Counsel and, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, as amended, timely files the following Answer and Affirmative Defenses to the Complaint and Notice of Hearing ("Complaint") issued by the Regional Director on September 25, 2018.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

To the extent that the Complaint encompasses any allegations occurring more than six months prior to the filing of an underlying charge with the National Labor Relations Board (NLRB) and the service of such charge upon GWUH, such allegations are time-barred by Section 10(b) of the National Labor Relations Act, as amended (hereinafter "NLRA").

SECOND DEFENSE

To the extent that the Complaint fails to give GWUH fair and adequate notice of the underlying charges, it denies GWUH its right to due process under the U.S. Constitution, its right

to notice of the charges under Section 10 of the NLRA, and its right to notice and a fair hearing under the Board's Rules and Regulations.

THIRD DEFENSE

The Complaint is invalid to the extent that any alleged agents of GWUH committed acts that are ultimately determined to be outside the scope of their authority, or to the extent that they were never directed, authorized, or permitted thereby.

FOURTH DEFENSE

The Complaint is invalid to the extent it fails to state a claim upon which relief may be granted.

FIFTH DEFENSE

The Complaint is invalid to the extent that that General Counsel has pled legal conclusions rather than required factual allegations.

SIXTH DEFENSE

To the extent that any supervisors and/or agents of GWUH at issue expressed only their views, arguments, or opinions, containing no threat of reprisal or promise of benefits, such statements were protected in their entirety by Section 8(c) of the Act.

SEVENTH DEFENSE

The Complaint is invalid to the extent that it deals with matters of contract interpretation that are more properly deferred to the underlying grievance and arbitration process.

EIGHT DEFENSE

The Complaint is invalid to the extent that any alleged changes to terms or conditions of employment were made in the ordinary course of business and did not alter the course of business or the *status quo ante*.

ANSWERS TO NUMBERED AND UNNUMBERED PARAGRAPHS

Responding to the initial unnumbered paragraph of the Complaint, GWUH denies that it has violated the Act as alleged therein.

1. Responding to Paragraph 1 of the Complaint, GWUH admits only that the above-styled charge (in its initial and amended form) reflects that it was filed on the dates set forth therein and that they were subsequently received by Respondent, but GWUH is without knowledge as to the date on which they were posted by U.S. mail.
2. Responding to Paragraph 2 of the Complaint, GWUH admits the allegations contained therein.
3. Responding to Paragraph 3 of the Complaint, GWUH admits the allegation contained therein.
4. Responding to Paragraph 4 of the Complaint:
 - (a) GWUH denies that Ms. Duncan occupied the position listed opposite her name, and further denies that she has been a supervisor or agent within the meaning of the Act.
 - (b) GWUH admits only that Ms. Ford occupied the position listed opposite her name from November, 2016 through May 12, 2017, and that in that capacity, she was a supervisor and on occasion an agent of GWUH within the meaning of the Act.
 - (c) GWUH admits only that Ms. Leonard occupied the position listed opposite her name from November, 2016 through July 3, 2018, and that in that capacity, she

was a supervisor and on occasion an agent of GWUH within the meaning of the Act.

(d) GWUH denies that Ms. Miller occupied the position listed opposite her name, but admits only that she was a supervisor and on occasion an agent of GWUH within the meaning of the Act from November, 2016 through May 9, 2017.

(e) GWUH denies that Ms. Schmid occupied the position listed opposite her name and further denies that she was a supervisor of GWUH, but admits only that on occasion she was an agent of GWUH within the meaning of the Act from November, 2016 through the date of this Answer.

(f) GWUH admits only that Mr. Trump occupied the position listed opposite his name from November, 2016 through the date of this Answer and that in that capacity, he was on occasion an agent of GWUH within the meaning of the Act, but denies that he was a supervisor of GWUH.

5. Responding to Paragraph 5 of the Complaint, GWUH admits only that it designated an Unnamed outside counsel to serve as its chief negotiator and that he or she had the authority to act in such capacity.
6. Responding to Paragraph 6 of the Complaint, GWUH admits the allegations set forth therein.
7.
 - (a) Responding to Paragraph 7(a) of the Complaint, GWUH admits the allegation set forth therein.
 - (b) Responding to Paragraph 7(b) of the Complaint, GWUH denies the allegations set forth therein.

(c) Responding to Paragraph 7(c) of the Complaint, GWUH denies the allegations set forth therein.

8. Responding to Paragraph 8 of the Complaint, GWUH admits only that since on or about February 1, 2018, it has suspended dues checkoff contributions pursuant to written notice previously served upon Charging Party on January 17, 2018, and that it did so without affording Charging Party an opportunity to bargain over that particular issue. All other allegations within Paragraph 8 of the Complaint are denied.
9. Responding to Paragraph 9 of the Complaint, GWUH denies the allegations contained therein.
10. Responding to Paragraph 10 of the Complaint, GWUH denies the allegations contained therein.

Responding to the unnumbered prayer for remedial relief that immediately follows Paragraph 10 of the Complaint, GWUH denies that the General Counsel is entitled to any of the relief sought therein. Any allegations not expressly admitted are hereby denied.

WHEREFORE, having fully answered the Complaint, GWUH prays that it be dismissed in its entirety, or in the alternative, that Counsel for the General Counsel be held to strict proof as to all allegations not specifically admitted.

Respectfully submitted this 5th day of October, 2018.

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray

Tammie L. Rattray

Florida Bar No. 0128619

trattray@fordharrison.com

For the Firm

101 E. Kennedy Boulevard, Suite 900

Tampa, Florida 33602

Telephone: (813) 261-7800

Facsimile: (813) 261-7899

Counsel for Respondent George Washington
University Hospital

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

THE GEORGE WASHINGTON UNIVERSITY)	
HOSPITAL,)	
)	
and)	
)	CASE NO. 05-CA-216482
1199 SERVICE EMPLOYEES)	
INTERNATIONAL UNION, UNITED)	
HEALTHCARE WORKERS)	
EAST, MD/DC REGION A/W SERVICE)	
EMPLOYEES INTERNATIONAL UNION.)	

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2018, I e-filed the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT with the Region using the Board's e-filing system, and immediately thereafter served it by electronic mail upon the following:

Yahnae Barner	Stephen W. Godoff, Esq.
1199 Service Employees International Union	Abato, Rubenstein & Abato, P.A
United Healthcare Workers East, MD/DC Region	Suite 320
611 N. Eutaw Street, Suite 320	809 Gleneagles Court
Baltimore, MD 21201	Baltimore, MD 21286-2230

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray
Tammie L. Rattray
Florida Bar No. 0128619
trattray@fordharrison.com
101 E. Kennedy Boulevard, Suite 900
Tampa, Florida 33602
Telephone: (813) 261-7800
Facsimile: (813) 261-7899

Counsel for Respondent George Washington
University Hospital



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlrb.gov
Telephone: (410)962-2822
Fax: (410)962-2198

October 15, 2018

Steven M. Bernstein, Esq.
Michael S. Bohling, Esq.
Fisher & Phillips, LLP
101 E. Kennedy Boulevard, Suite 2350
Tampa, FL 33602-5136

Reyburn W. Lominack, III, Esq.
Fisher Phillips, LLP
1320 Main Street, Suite 750
Columbia, SC 29201-3284

Tammie L. Rattray, Esq.
Ford & Harrison LLP
101 E. Kennedy Boulevard, Suite 900
Tampa, FL 33602-5133

Re: The George Washington University
Hospital
Case 05-CA-216482

Dear Mr. Bernstein, Mr. Bohling, Mr. Lominack and Ms. Rattray:

Approval of Request to Withdraw Portion of the Charge: On September 7, 2018, the Charging Party filed a first amended charge alleging that at all times within the last six months, The George Washington University Hospital violated Section 8(a)(5) of the Act by the following conduct: (1) simultaneously maintaining and adhering to a restrictive grievance/arbitration procedure, no-strike provision and an expansive management rights clause in its contract proposals; (2) the unilateral cessation of dues check-off; and (3) regressive bargaining with respect to its discipline and grievance/mediation proposals. This is to advise that I have approved the Charging Party's request to withdraw allegation numbered 2 above.

October 15, 2018

This action does not affect the remaining portions of the charge, specifically allegations numbered 1 and 3 above, which are still outstanding and are being processed further by this office.

Very truly yours,

/s/ Kimberly E. Andrews

Kimberly E. Andrews
Acting Regional Director

cc: Stephen W. Godoff, Esq.
Abato, Rubenstein & Abato, P.A.
809 Gleneagles Court, Suite 320
Baltimore, MD 21286-2230

Ms. Alicia Brill
Assistant Director, Human Resources
The George Washington University
Hospital
900 23rd Street, N.W.
Washington, DC 20037-2342

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

THE GEORGE WASHINGTON UNIVERSITY
HOSPITAL

and

Case 5-CA-216482

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be, and the same hereby is, rescheduled from January 28, 2019, to March 11, 2019, at the same time and place.

Dated at Baltimore, Maryland this 14th day of December 2018.

(SEAL)

/s/ SEAN R. MARSHALL

Sean R. Marshall, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center -Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

THE GEORGE WASHINGTON UNIVERSITY
HOSPITAL

and

Case 5-CA-216482

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

ORDER RESCHEDULING HEARING

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be, and the same hereby is, rescheduled from March 11, 2019, to June 18, 2019, at the same time and place.

Dated at Baltimore, Maryland this 26th day of February 2019.

(SEAL)

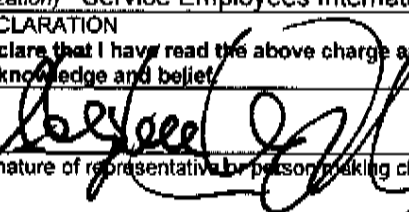
/s/ NANCY WILSON

Nancy Wilson, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center -Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**SECOND AMENDED CHARGE AGAINST EMPLOYER****INSTRUCTIONS:**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
5-CA-216482	5/10/19

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer Universal Health Services, Inc. and George Washington University d/b/a The George Washington University Hospital		b. Tel. No. (202) 715-5087	
		c. Cell No.	
d. Address (street, city, state ZIP code) 900 23 rd St N.W. Washington, D.C. 20037	e. Employer Representative Alicia Brill Assistant Director HR		f. Fax No. (202) 715-4402
			g. e-Mail
			h. Dispute Location (City and State) Washington, D.C.
i. Type of Establishment (factory, nursing home, hotel) Hospital	j. Principal Product or Service Healthcare	k. Number of workers at dispute location 115	
1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a)(1) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) At all times within the last six months, the Employer, by its officers, agents and representatives has failed to bargain in good faith with 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region, by engaging in overall surface bargaining, evidenced by the following unlawful conduct: <ul style="list-style-type: none"> Simultaneously maintaining and adhering to a restrictive grievance/arbitration procedure, no strike provision, and an expansive management rights clause in its contract proposals; and Regressive bargaining with respect to its discipline and grievance/mediation proposals. 			
3. Full name of party filing charge (if labor organization, give full name, including local name and number) 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region			
4a. Address (street and number, city, state, and ZIP code) 611 N. Eutaw Street, Suite 320 Baltimore, MD 21201		4b. Tel. No.	
		4c. Cell No.	
		4d. Fax No.	
		4e. e-Mail	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union			
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. (410) 321-0990, ext. 216	
By:  (signature of representative or person making charge)		Office, if any, Cell No.	
Stephen Godoff, Attorney Print Name and Title		Fax No. (410) 321-1419	
Address: 611 N. Eutaw St Ste 320, Baltimore, Maryland 21286		e-Mail sgodoff@abato.com	
Date:			

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENTSolicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlrb.gov
Telephone: (410)962-2822
Fax: (410)962-2198



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May 13, 2019

Stephen W. Godoff, Esq.
Abato, Rubenstein & Abato, P.A.
809 Gleneagles Ct., Ste. 320
Baltimore, MD 21286-2230

Re: Universal Health Services, Inc. and George
Washington University d/b/a The George
Washington University Hospital
Case 05-CA-216482

Dear Mr. Godoff:

We have docketed the second amended charge that you filed in this case.

Investigator: This charge is being investigated by Field Examiner Bisi Dean whose telephone number is (410) 962-0179. If Bisi Dean is not available, you may contact Supervisory Field Examiner David A. Colangelo whose telephone number is (410) 962-0180.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the second amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

May 13, 2019

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Nancy Wilson", is positioned above the typed name and title.

Nancy Wilson
Acting Regional Director

Enclosure: Copy of second amended charge

cc: Mr. Stephen Godoff
1199 Service Employees International Union,
United Healthcare Workers East, MD/DC Region
611 N. Eutaw St., Ste. 320
Baltimore, MD 21201



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlrb.gov
Telephone: (410)962-2822
Fax: (410)962-2198



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May 13, 2019

Ms. Alicia Brill, Assistant Director, Human Resources
Universal Health Services, Inc. and
George Washington University d/b/a
The George Washington University Hospital
900 23rd St., N.W.
Washington, DC 20037-2342

Re: Universal Health Services, Inc. and George
Washington University d/b/a The George
Washington University Hospital
Case 05-CA-216482

Dear Ms. Brill:

Enclosed is a copy of the second amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Examiner Bisi Dean whose telephone number is (410) 962-0179. If Bisi Dean is not available, you may contact Supervisory Field Examiner David A. Colangelo whose telephone number is (410) 962-0180.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the second amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

May 13, 2019

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Very truly yours,

A handwritten signature in dark ink, appearing to read "Nancy Wilson", is positioned above the typed name and title.

Nancy Wilson
Acting Regional Director

Enclosure: Copy of second amended charge

cc: Steven M. Bernstein, Esq.
Michael S Bohling, Esq.
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**THE GEORGE WASHINGTON UNIVERSITY
HOSPITAL**

Charged Party

and

**1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS
EAST, MD/DC REGION**

Charging Party

Case 05-CA-216482

AFFIDAVIT OF SERVICE OF SECOND AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on May 13, 2019, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Ms. Alicia Brill
Assistant Director, Human Resources
Universal Health Services, Inc. and
George Washington University d/b/a
The George Washington University Hospital
900 23rd St., N.W.
Washington, DC 20037-2342

Reyburn W. Lominack, Esq.
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Tammie L. Rattray, Esq.
Ford Harrison LLP
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Tampa, FL 33602-5133

May 13, 2019

Date

Andrew Giannasi, Designated Agent of NLRB

Name

/s/ Andrew Giannasi

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

UNIVERSAL HEALTH SERVICES, INC. AND
GEORGE WASHINGTON UNIVERSITY D/B/A THE
GEORGE WASHINGTON UNIVERSITY HOSPITAL

and

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

Cases 5-CA-216482
5-CA-230128
5-CA-238809

**ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 5-CA-216482, filed by 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region a/w Service Employees International Union (the Charging Party) against The George Washington University Hospital (Respondent), in which a Complaint and Notice of Hearing issued on September 25, 2018, is consolidated with Case 5-CA-230128 and Case 5-CA-238809, filed by the Charging Party against Respondent.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations and alleges Respondent has violated the Act as described below.

1. The charges in the above cases were filed by the Charging Party, as set forth in the following table, and served upon Respondent, on the dates indicated, by U.S. Mail:

Case No.	Amendment	Date Filed	Date Served
(a) 5–CA–216482		March 12, 2018	March 14, 2018
(b) 5–CA–216482	First Amended	September 7, 2018	September 10, 2018
(c) 5–CA–230128		October 29, 2018	October 31, 2018
(d) 5–CA–230128	First Amended	April 2, 2019	April 2, 2019
(e) 5–CA–238809		April 2, 2019	April 2, 2019

2. (a) At all material times, Respondent has been a general partnership with an office and place of business in Washington, D.C. (Respondent’s facility), and has been engaged in providing short-term acute medical care to the general public.

(b) At all material times, Respondent has been owned jointly by Universal Health Services, Inc. and George Washington University, as general partners doing business as The George Washington University Hospital,

(c) In conducting its operations during the 12-month period ending March 31, 2019, Respondent derived gross revenues in excess of \$250,000.

(d) During the period of time described above in paragraph 2(c), Respondent received goods and materials valued in excess of \$5,000 directly from points outside of Washington, D.C.

(e) During the period of time described above in paragraph 2(c), Respondent has conducted its business operations described above in paragraph 2(a) in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

(f) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a healthcare institution within the meaning of Section 2(14) of the Act.

3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- (a) Monique Duncan - Director, Environmental Services Department
- (b) Katina Ford - Supervisor, Environmental Services Department
- (c) Tracey Leonard - Senior Human Resources Generalist
- (d) Makita Miller - Assistant Director for George Washington University
- (e) Kim Russo - Chief Executive Officer
- (f) Jeanie Schmid - Human Resources Vice President/Corporate Universal Health Services Office
- (g) Robert Trump - Director, Food Services Department

5. At all material times, an Unnamed Agent held the positions of Respondent's Lead Negotiator and Counsel and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

6. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and regular part-time employees of [Respondent] in the Environmental Services, Linen Services, Ambulatory Care Center and Food Services Departments of George Washington University Hospital

(b) From a time presently unknown to the undersigned until October 26, 2018, Respondent recognized the Charging Party as the exclusive collective-bargaining representative of the Unit. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from December 20, 2012 through December 19, 2016.

(c) At all material times, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

7. (a) At various times from about November 21, 2016 to October 26, 2018, Respondent and the Charging Party met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described above in paragraph 6(b).

(b) During the period of time described above in paragraph 7(a), Respondent bargained with no intention of reaching agreement by:

(1) simultaneously maintaining and adhering to bargaining proposals that provide the Unit with fewer rights than afforded to them without a collective-bargaining agreement, such as a restrictive grievance-arbitration procedure that does not include binding arbitration, a no-strike provision, and an expansive management's right clause; and

(2) engaging in regressive bargaining by proposing that discharges be subject to the grievance-arbitration procedure, and then later proposing that the grievance procedure culminates in non-binding mediation.

(c) By its overall conduct, including the conduct described above in paragraph 7(b), Respondent has failed and refused to bargain in good faith with the Charging Party as the exclusive collective-bargaining representative of the Unit.

8. (a) About October 26, 2018, Respondent withdrew its recognition of the Charging Party as the exclusive collective-bargaining representative of the Unit.

(b) Since about October 26, 2018, Respondent has failed and refused to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the Unit.

9. (a) About November 1, 2018, Respondent unilaterally implemented changes to the following matters:

- (1) wage rates;
- (2) a compensation structure; and
- (3) transit benefits.

(b) The subjects set forth above in paragraph 9(a) relate to the wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

10. Respondent engaged in the conduct described above in paragraph 9 without affording the Charging Party an opportunity to bargain with Respondent with respect to this conduct.

11. About November 1, 2018, Respondent, in a memorandum to employees, told employees they did not receive benefits because of the Charging Party.

12. By the conduct described above in paragraph 11, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraphs 7(b), 7(c), 8, 9(a) and 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

As part of the remedy for the unfair labor practices alleged above in paragraphs 7(b), 7(c), and 13, the General Counsel seeks an Order requiring Respondent to make whole: (1) the Charging Party for all costs and expenses incurred during negotiations; and (2) employee negotiators for any earnings and or leave lost while attending bargaining sessions.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before May 14, 2019, or postmarked on or before May 13, 2019.**

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on June 18, 2019, at 10:00 a.m., at the Board Hearing Room, Suite 6001, 1015 Half Street, SE, Washington, DC, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore this 30th day of April 2019.

(SEAL)

/s/ NANCY WILSON

Nancy Wilson, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND)	
GEORGE WASHINGTON UNIVERSITY)	
D/B/A THE GEORGE WASHINGTON)	
UNIVERSITY HOSPITAL,)	
)	
and)	CASE NOS. 05-CA-216482
)	05-CA-230128
1199 SERVICE EMPLOYEES INTERNATIONAL)	05-CA-238809
UNION, UNITED HEALTHCARE WORKERS)	
EAST, MD/DC REGION A/W SERVICE)	
EMPLOYEES INTERNATIONAL UNION.)	

**ANSWER AND AFFIRMATIVE DEFENSES TO THE CONSOLIDATED COMPLAINT
OF UNIVERSAL HEALTH SERVICES, INC. AND
THE GEORGE WASHINGTON UNIVERSITY HOSPITAL**

Comes now UNIVERSAL HEALTH SERVICES, INC. (“UHS”) and THE GEORGE WASHINGTON UNIVERSITY HOSPITAL (“GWUH” or “Respondent”) (collectively, “Named Parties”)¹, by and through undersigned Counsel and, pursuant to Sections 102.20 and 102.21 of the Board’s Rules and Regulations, as amended, timely files the following Answer and Affirmative Defenses to the Consolidated Complaint and Notice of Hearing (“Consolidated Complaint”) issued by the Acting Regional Director on April 30, 2019.

¹ By filing this Answer, Named Parties do not consent or admit to any joint employer relationship between each other or with the other entity appearing within the case style, The George Washington University (“GWU”). The undersigned files this response on behalf of UHS and GWUH only and does not represent or purport to represent GWU. To the undersigned’s knowledge, GWU has not been served in this matter.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

To the extent that the Consolidated Complaint encompasses any allegations occurring more than six months prior to the filing of an underlying charge with the National Labor Relations Board (“NLRB”) and the service of such charge upon Named Parties, such allegations are time-barred by Section 10(b) of the National Labor Relations Act, as amended (“NLRA” or “the Act”).

SECOND DEFENSE

To the extent that the Consolidated Complaint fails to give Named Parties fair and adequate notice of the underlying charges, it denies Named Parties their right to due process under the U.S. Constitution, their right to notice of the charges under Section 10 of the NLRA, and their right to notice and a fair hearing under the Board’s Rules and Regulations.

THIRD DEFENSE

The Consolidated Complaint is invalid to the extent that any alleged agents of Named Parties committed acts that are ultimately determined to be outside the scope of their authority, or to the extent that they were never directed, authorized, or permitted thereby.

FOURTH DEFENSE

The Consolidated Complaint is invalid to the extent it fails to state a claim upon which relief may be granted.

FIFTH DEFENSE

The Consolidated Complaint is invalid to the extent that that General Counsel has pled legal conclusions rather than required factual allegations.

SIXTH DEFENSE

To the extent that any supervisors and/or agents of Named Parties at issue expressed only their views, arguments, or opinions, containing no threat of reprisal or promise of benefits, such statements were protected in their entirety by Section 8(c) of the Act.

SEVENTH DEFENSE

The Consolidated Complaint is invalid to the extent that any alleged changes to terms or conditions of employment were made in the ordinary course of business and did not alter the course of business or the *status quo ante*.

EIGHTH DEFENSE

During the course of collective bargaining, the Charging Party failed and refused to bargain in good faith with Named Parties in violation of Section 8(b)(3) of the Act.

NINTH DEFENSE

UHS did not employ members of the Unit, singularly or jointly, directly or indirectly, in partnership with GWU, GWUH or any combination thereof.

ANSWERS TO NUMBERED AND UNNUMBERED PARAGRAPHS

Responding to the initial unnumbered paragraph of the Consolidated Complaint, UHS and GWUH deny that they have violated the Act as alleged therein.

The Consolidated Complaint defines “Respondent” as “The George Washington University Hospital” (*see* unnumbered first paragraph of Consolidated Complaint), and UHS and GWUH are relying upon that provided-for definition in responding to the Consolidated Complaint. To the extent the General Counsel intends to imply that despite the provided-for definition of “Respondent” that UHS is in fact a “Respondent” as that term is subsequently used in the balance of the Consolidated Complaint (whether based on the case style or something else), UHS denies

that it was an “employer,” joint or otherwise, with or without GWUH and/or GWU, of the Unit, and denies all allegations not specifically admitted.

1. Responding to Paragraph 1 of the Consolidated Complaint, Respondent admits only that the above-styled charges (in their initial and amended forms) reflect that they were filed on the dates set forth therein and that they were subsequently received by Respondent, but Respondent is without knowledge as to the date on which they were posted by U.S. mail, and therefore, denies those allegations.

2. Responding to Paragraph 2 of the Consolidated Complaint, Respondent admits the allegations contained therein.

3. Responding to Paragraph 3 of the Consolidated Complaint, Respondent admits the allegation contained therein.

4. Responding to Paragraph 4 of the Consolidated Complaint:

(a) Respondent denies that Ms. Duncan occupied the position listed opposite her name and further denies that she has been a supervisor or agent within the meaning of the Act;.

(b) Respondent admits only that Ms. Ford occupied the position listed opposite her name from November 2016 through May 12, 2017, and that in that capacity, she was a supervisor and on occasion an agent of Respondent within the meaning of the Act;

(c) Respondent admits only that Ms. Leonard occupied the position listed opposite her name from November 2016 through July 3, 2018, and that in that capacity, she was a supervisor and on occasion an agent of Respondent within the meaning of the Act;

(d) Respondent denies that Ms. Miller occupied the position listed opposite her name, but admits only that she was a supervisor and on occasion an agent of Respondent within the meaning of the Act from November 2016 through May 9, 2017;

(e) Respondent admits only that Ms. Russo occupied the position listed opposite her name from November 2016 through the date of this Answer, and that in that capacity, she served as a supervisor and agent of Respondent;

(f) Respondent denies that Ms. Schmid occupied the position listed opposite her name and further denies that she was a supervisor of Respondent, but admits only that on occasion she was an agent of Respondent within the meaning of the Act from November 2016 through the date of this Answer;

(g) Respondent admits only that Mr. Trump occupied the position listed opposite his name from November 2016 through October 25, 2018, and that in that capacity, he was on occasion an agent of Respondent within the meaning of the Act, but denies that he was a supervisor of Respondent.

5. Responding to Paragraph 5 of the Consolidated Complaint, Respondent admits only that it designated an Unnamed outside counsel to serve as chief negotiator and that he or she had the authority to act in such capacity.

6. (a) Responding to Paragraph 6(a) of the Consolidated Complaint, Respondent admits the allegations set forth therein²;

(b) Responding to Paragraph 6(b) of the Consolidated Complaint, Respondent admits the allegations set forth therein.

² To the extent alleged or implied, UHS denies that it employed any employees in the Unit.

(c) Responding to Paragraph 6(c) of the Consolidated Complaint, Respondent denies the allegations.

7. (a) Responding to Paragraph 7(a) of the Consolidated Complaint, Respondent admits the allegation set forth therein.

(b) Responding to Paragraph 7(b) of the Consolidated Complaint, Respondent denies the allegations set forth therein.

(c) Responding to Paragraph 7(c) of the Consolidated Complaint, Respondent denies the allegations set forth therein.

8. (a) Responding to Paragraph 8(a) of the Consolidated Complaint, Respondent admits the allegations set forth therein.

(b) Responding to Paragraph 8(b) of the Consolidated Complaint, Respondent admits only that it withdrew recognition from Charging Party on October 26, 2018, and since that date, has refused to bargain with Charging Party since it no longer enjoyed the support of a majority of members of the Unit. Respondent denies the remaining allegations in Paragraph 8(b).

9. (a) Responding to Paragraph 9(a) of the Consolidated Complaint, Respondent admits only that on or about November 1, 2018, it announced its intent to transition to market-based pay rates and a merit-based pay program and that it implemented a monthly commuter subsidy beginning the November 11, 2018 pay period, and that it did so without affording Charging Party an opportunity to bargain over those issues. Respondent denies the remaining allegations in Paragraph 9(a).

(b) Responding to Paragraph 9(b) of the Consolidated Complaint, Respondent admits only that wage rates, compensation structure, and transit benefits relate to wages, hours and other terms and conditions of employment and would be a mandatory subject of bargaining with a

representative that enjoyed majority support. Respondent denies the remaining allegations in Paragraph 9(b).

10. Responding to Paragraph 10 of the Consolidated Complaint, Respondent admits only that on or about November 1, 2018, GWUH announced its intent to transition to market-based pay rates and a merit-based pay program and that it implemented a monthly commuter subsidy beginning the November 11, 2018 pay period, and that it did so without affording Charging Party an opportunity to bargain over those issues. Respondent denies the remaining allegations in Paragraph 10.

11. Responding to Paragraph 11 of the Consolidated Complaint, Respondent admits only that on or about November 1, 2018, GWUH issued a memorandum to employees that made the true statement that Charging Party did not negotiate a commuter benefit for the Unit and denies the remaining allegations set forth therein.

12. Responding to Paragraph 12 of the Consolidated Complaint, Respondent denies the allegations contained therein.

13. Responding to Paragraph 13 of the Consolidated Complaint, Respondent denies the allegations contained therein.

14. Responding to Paragraph 14 of the Consolidated Complaint, Respondent denies the allegations contained therein.

Responding to the unnumbered prayer for remedial relief that immediately follows Paragraph 14 of the Consolidated Complaint, Named Parties deny that the General Counsel is entitled to any of the relief sought therein. Named Parties deny each and every allegation not expressly admitted herein.

WHEREFORE, having fully answered the Consolidated Complaint, Named Parties pray that it be dismissed in its entirety, or in the alternative, that Counsel for the General Counsel be held to strict proof as to all allegations not specifically admitted.

Respectfully submitted this 14th day of May, 2019.

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray

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Counsel for Respondents Universal Health
Services, Inc. and The George Washington
University Hospital

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND)		
GEORGE WASHINGTON UNIVERSITY)		
D/B/A THE GEORGE WASHINGTON)		
UNIVERSITY HOSPITAL,)		
and)	CASE NOS.	05-CA-216482
1199 SERVICE EMPLOYEES INTERNATIONAL)		05-CA-230128
UNION, UNITED HEALTHCARE WORKERS)		05-CA-238809
EAST, MD/DC REGION A/W SERVICE)		
EMPLOYEES INTERNATIONAL UNION.)		

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2019, I e-filed the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT with the Region using the Board's e-filing system, and immediately thereafter served it by electronic mail upon the following:

Yahnae Barner
yahnae.barner@1199.org
1199 Service Employees International Union
United Healthcare Workers East, MD/DC Region
611 N. Eutaw Street, Suite 320
Baltimore, MD 21201

Stephen W. Godoff, Esq.
sgodoff@abato.com
Abato, Rubenstein & Abato, P.A
Suite 320
809 Gleneagles Court
Baltimore, MD 21286-2230

FORD & HARRISON LLP

By: /s/ Tammie L. Ratray
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Counsel for Respondents Universal Health
Services, Inc. and George Washington
University Hospital

WSACTIVE LLP:10534272.1

Post-It® Fax Note

7671

Date	6/2/19	# of pages	1
To	[Signature]		
From			
Co./Dept.	NLRB		
Phone #			
Fax #			

TH
INSTRUCTION

DO NOT WRITE IN THIS SPACE

Case

Date Filed

5-CA-216482

6/2/19

File an original

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Universal Health Services, Inc. and George Washington University d/b/a The George Washington University Hospital		b. Tel. No. (202) 715-5087
		c. Cell No.
d. Address (street, city, state ZIP code) 900 23rd St N.W. Washington, D.C. 20037	e. Employer Representative Alicia Brill Assistant Director HR	f. Fax No. (202) 715-4402
		g. e-Mail
		h. Dispute Location (City and State) Washington, D.C.
i. Type of Establishment (factory, nursing home, hotel) Hospital	j. Principal Product or Service Healthcare	k. Number of workers at dispute location 115

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a)(1) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

At all times within the last six months, the Employer, by its officers, agents and representatives has failed to bargain in good faith with 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region, by engaging in overall surface bargaining, evidenced by the following unlawful conduct:

- Simultaneously maintaining and adhering to a restrictive grievance/arbitration procedure, no strike provision, and an expansive management rights clause in its contract proposals;
- Regressive bargaining with respect to its discipline and grievance/mediation proposals;
- Maintaining and adhering to a proposal to delete the union security clause; and
- Maintaining and adhering to wage proposals that give the Employer unfettered discretion in determining the wages of bargaining unit employees.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region

4a. Address (street and number, city, state, and ZIP code)

611 N. Eutaw Street, Suite 320
Baltimore, MD 21201

4b. Tel. No.

4c. Cell No.

4d. Fax No.

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.
(410) 321-0990, ext. 216

Office, if any, Cell No.

By:

(Signature of representative or person making charge)

Stephen Godoff, Attorney

Print Name and Title

Fax No.
(410) 321-1419

Address: 611 N. Eutaw St Ste 320,
Baltimore, Maryland 21286

Date:

6/2/19

e-Mail
sgodoff@abato.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlrb.gov
Telephone: (410)962-2822
Fax: (410)962-2198



Download
NLRB
Mobile App

June 4, 2019

Stephen W. Godoff, Esq.
Abato, Rubenstein & Abato, P.A.
809 Gleneagles Ct., Ste. 320
Baltimore, MD 21286-2230

Re: Universal Health Services, Inc. and George
Washington University d/b/a The George
Washington University Hospital
Case 05-CA-216482

Dear Mr. Godoff:

We have docketed the third amended charge that you filed in this case.

Investigator: This charge is being investigated by Field Attorney Barbara Duvall whose telephone number is (410) 962-2915. If Barbara Duvall is not available, you may contact Supervisory Field Attorney Thomas Murphy whose telephone number is (410) 962-2538.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. If you have additional evidence regarding the allegations in the third amended charge and you have not yet scheduled a date and time for the Board agent to obtain that evidence, please contact the Board agent to arrange to present that evidence. If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

June 4, 2019

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nancy Wilson". The signature is fluid and cursive, with the first name "Nancy" and last name "Wilson" clearly distinguishable.

Nancy Wilson
Acting Regional Director

Enclosure: Copy of third amended charge

cc: Stephen Godoff, Esq.
1199 Service Employees International
Union, United Healthcare Workers East
MD/DC Region
611 N. Eutaw St., Ste. 320
Baltimore, MD 21201



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlrb.gov
Telephone: (410)962-2822
Fax: (410)962-2198



Download
NLRB
Mobile App

June 4, 2019

Steven M. Bernstein, Esq.
Michael S Bohling, Esq.
Tammie L. Rattray, Esq.
Fisher & Phillips, LLP
101 E. Kennedy Blvd., Ste. 2350
Tampa, FL 33602-5136

Reyburn W. Lominack, Esq.
Fisher Phillips, LLP
1320 Main St., Ste. 750
Columbia, SC 29201-3284

Paul R. Beshears, Esq.
FordHarrison LLP
271 17th St., N.W., Ste. 1900
Atlanta, GA 30363-6202

Re: Universal Health Services, Inc. and George
Washington University d/b/a The George
Washington University Hospital
Case 05-CA-216482

Dear Mr. Bernstein, Mr. Bohling, Ms. Rattray, Mr. Lominack and Mr. Beshears:

Enclosed is a copy of the third amended charge that has been filed in this case.

Investigator: This charge is being investigated by Field Attorney Barbara Duvall whose telephone number is (410) 962-2915. If Barbara Duvall is not available, you may contact Supervisory Field Attorney Thomas Murphy whose telephone number is (410) 962-2538.

Presentation of Your Evidence: As you know, we seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations in the third amended charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

June 4, 2019

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: Your right to representation, the means of presenting evidence, and a description of our procedures, including how to submit documents, was described in the letter sent to you with the original charge in this matter. If you have any questions, please contact the Board agent. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Nancy Wilson", is positioned above the typed name.

Nancy Wilson
Acting Regional Director

Enclosure: Copy of third amended charge

cc: See Page 3

Universal Health Services, Inc. and George - 3 -
Washington University d/b/a The George
Washington University Hospital
Case 05-CA-216482

June 4, 2019

cc: Ms. Alicia Brill
 Assistant Director, Human Resources
 Universal Health Services, Inc. and
 George Washington University d/b/a
 The George Washington University Hospital
 900 23rd St., N.W.
 Washington, DC 20037-2342

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

**UNIVERSAL HEALTH SERVICES, INC. AND
GEORGE WASHINGTON UNIVERSITY D/B/A
THE GEORGE WASHINGTON UNIVERSITY
HOSPITAL**

Charged Party

and

**1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS
EAST, MD/DC REGION**

Charging Party

Case 05-CA-216482

AFFIDAVIT OF SERVICE OF THIRD AMENDED CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on June 4, 2019, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Steven M. Bernstein, Esq.
Michael S Bohling, Esq.
Tammie L. Rattray, Esq.
Fisher & Phillips, LLP
101 E. Kennedy Blvd., Ste. 2350
Tampa, FL 33602-5136

Paul R. Beshears, Esq.
FordHarrison LLP
271 17th St., N.W., Ste. 1900
Atlanta, GA 30363-6202

Reyburn W. Lominack, Esq.
Fisher Phillips, LLP
1320 Main St., Ste. 750
Columbia, SC 29201-3284

Ms. Alicia Brill
Assistant Director, Human Resources
Universal Health Services, Inc. and
George Washington University d/b/a
The George Washington University Hospital
900 23rd St., N.W.
Washington, DC 20037-2342

June 4, 2019

Date

Andrew Giannasi, Designated Agent of
NLRB

Name

/s/ Andrew Giannasi

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

UNIVERSAL HEALTH SERVICES, INC. AND
GEORGE WASHINGTON UNIVERSITY D/B/A THE
GEORGE WASHINGTON UNIVERSITY HOSPITAL

and

Cases 5-CA-216482
5-CA-230128
5-CA-238809

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

**ORDER CONSOLIDATING CASES, FIRST AMENDED
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 5-CA-216482, filed by 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region a/w Service Employees International Union (the Charging Party) against The George Washington University Hospital (Respondent), in which a Complaint and Notice of Hearing issued on September 25, 2018, is consolidated with Case 5-CA-230128 and Case 5-CA-238809, filed by the Charging Party against Respondent.

This Order Consolidating Cases, First Amended Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations and alleges Respondent has violated the Act as described below.

1. The charges in the above cases were filed by the Charging Party, as set forth in the following table, and served upon Respondent, on the dates indicated, by U.S. Mail:

Case No.	Amendment	Date Filed	Date Served
(a) 5-CA-216482		March 12, 2018	March 14, 2018
(b) 5-CA-216482	First Amended	September 7, 2018	September 10, 2018
(c) 5-CA-216482	Second Amended	May 10, 2019	May 13, 2019
(d) 5-CA-216482	Third Amended	June 2, 2019	June 4, 2019
(e) 5-CA-230128		October 29, 2018	October 31, 2018
(f) 5-CA-230128	First Amended	April 2, 2019	April 2, 2019
(g) 5-CA-230128	Second Amended	May 10, 2019	May 14, 2019
(h) 5-CA-238809		April 2, 2019	April 2, 2019
(i) 5-CA-238809	First Amended	May 10, 2019	May 13, 2019

2. (a) At all material times, Respondent has been a general partnership with an office and place of business in Washington, D.C. (Respondent's facility), and has been engaged in providing short-term acute medical care to the general public.

(b) At all material times, Respondent has been owned jointly by Universal Health Services, Inc. and George Washington University, as general partners doing business as The George Washington University Hospital.

(c) In conducting its operations during the 12-month period ending March 31, 2019, Respondent derived gross revenues in excess of \$250,000.

(d) During the period of time described above in paragraph 2(c), Respondent received goods and materials valued in excess of \$5,000 directly from points outside of Washington, D.C.

(e) During the period of time described above in paragraph 2(c), Respondent has conducted its business operations described above in paragraph 2(a), in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

(f) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a healthcare institution within the meaning of Section 2(14) of the Act.

3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- | | | |
|--------------------|---|---|
| (a) Katina Ford | - | Supervisor, Environmental Services Department |
| (b) Tracey Leonard | - | Senior Human Resources Generalist |
| (c) Makita Miller | - | Assistant Director for George Washington University |

- (d) Kim Russo - Chief Executive Officer
- (e) Jeanie Schmid - Human Resources Vice President/Corporate
Universal Health Services Office
- (f) Robert Trump - Director, Food Services Department

5. At all material times, an Unnamed Agent held the positions of Respondent's Lead Negotiator and Counsel and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

6. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and regular part-time
employees of [Respondent] in the Environmental
Services, Linen Services, Ambulatory Care Center
and Food Services Departments of George
Washington University Hospital

(b) From a time presently unknown to the undersigned until October 26, 2018, Respondent recognized the Charging Party as the exclusive collective-bargaining representative of the Unit. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from December 20, 2012 through December 19, 2016.

(c) At all material times, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

7. (a) At various times from about November 21, 2016 to October 26, 2018, Respondent and the Charging Party met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described above in paragraph 6(b).

(b) During the period of time described above in paragraph 7(a), Respondent bargained with no intention of reaching agreement by:

(1) simultaneously maintaining and adhering to bargaining proposals that provide the Unit with fewer rights than afforded to them without a collective-bargaining agreement, such as a restrictive grievance-arbitration procedure that does not include binding arbitration, a no-strike provision, and an expansive management's right clause;

(2) engaging in regressive bargaining by proposing that discharges be subject to the grievance-arbitration procedure, and then later proposing that the grievance procedure culminates in non-binding mediation;

(3) simultaneously maintaining and adhering to a bargaining proposal that deletes a longstanding union security clause provision; and

(4) simultaneously maintaining and adhering to wage proposals that give Respondent unfettered discretion.

(c) By its overall conduct, including the conduct described above in paragraph 7(b), Respondent has failed and refused to bargain in good faith with the Charging Party as the exclusive collective-bargaining representative of the Unit.

8. (a) About October 26, 2018, Respondent withdrew its recognition of the Charging Party as the exclusive collective-bargaining representative of the Unit.

(b) Since about October 26, 2018, Respondent has failed and refused to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the Unit.

9. (a) About November 1, 2018, Respondent unilaterally implemented changes to the following matters:

- (1) wage rates;
- (2) a compensation structure; and
- (3) transit benefits.

(b) The subjects set forth above in paragraph 9(a) relate to the wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

10. Respondent engaged in the conduct described above in paragraph 9 without affording the Charging Party an opportunity to bargain with Respondent with respect to this conduct.

11. About November 1, 2018, Respondent, in a memorandum to employees, told employees they did not receive benefits because of the Charging Party.

12. By the conduct described above in paragraph 11, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. By the conduct described above in paragraphs 7(b), 7(c), 8, 9(a) and 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

As part of the remedy for the unfair labor practices alleged above in paragraphs 7(b), 7(c), and 13, the General Counsel seeks an Order requiring Respondent to make whole: (1) the Charging Party for all costs and expenses incurred during negotiations; and (2) employee negotiators for any earnings and or leave lost while attending bargaining sessions.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before June 20, 2019, or postmarked on or before June 19, 2019.**

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused

on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on June 18, 2019, at 10:00 a.m., at the Board Hearing Room, Suite 6001, 1015 Half Street, SE, Washington, D.C., and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form

NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore this 6th day of June 2019.

(SEAL)

/s/ NANCY WILSON

Nancy Wilson, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND)	
GEORGE WASHINGTON UNIVERSITY)	
D/B/A THE GEORGE WASHINGTON)	
UNIVERSITY HOSPITAL,)	
)	
and)	CASE NOS. 05-CA-216482
)	05-CA-230128
1199 SERVICE EMPLOYEES INTERNATIONAL)	05-CA-238809
UNION, UNITED HEALTHCARE WORKERS)	
EAST, MD/DC REGION A/W SERVICE)	
EMPLOYEES INTERNATIONAL UNION.)	

**ANSWER AND AFFIRMATIVE DEFENSES OF UNIVERSAL HEALTH SERVICES,
INC. AND THE GEORGE WASHINGTON UNIVERSITY HOSPITAL
TO THE FIRST AMENDED CONSOLIDATED COMPLAINT**

Comes now UNIVERSAL HEALTH SERVICES, INC. (“UHS”) and THE GEORGE WASHINGTON UNIVERSITY HOSPITAL (“GWUH” or “Respondent”) (collectively, “Named Parties”)¹, by and through undersigned Counsel and, pursuant to Sections 102.23 of the Board’s Rules and Regulations, as amended, timely files this Answer and Affirmative Defenses to the First Amended Consolidated Complaint (“First Amended Consolidated Complaint”) and Notice of Hearing filed in this matter on June 6, 2019.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

To the extent that the First Amended Consolidated Complaint encompasses any allegations occurring more than six months prior to the filing of an underlying charge with the National Labor

¹ By filing this Answer, Named Parties do not consent or admit to any joint employer relationship between each other or with the other entity appearing within the case style, The George Washington University (“GWU”). The undersigned files this response on behalf of UHS and GWUH only and does not represent or purport to represent GWU. To the undersigned’s knowledge, GWU has not been served in this matter.

Relations Board (“NLRB”) and the service of such charge upon Named Parties, such allegations are time-barred by Section 10(b) of the National Labor Relations Act, as amended (“NLRA” or “the Act”).

SECOND DEFENSE

To the extent that the First Amended Consolidated Complaint fails to give Named Parties fair and adequate notice of the underlying charges, it denies Named Parties their right to due process under the U.S. Constitution, their right to notice of the charges under Section 10 of the NLRA, and their right to notice and a fair hearing under the Board’s Rules and Regulations.

THIRD DEFENSE

The First Amended Consolidated Complaint is invalid to the extent that any alleged agents of Named Parties committed acts that are ultimately determined to be outside the scope of their authority, or to the extent that they were never directed, authorized, or permitted thereby.

FOURTH DEFENSE

The First Amended Consolidated Complaint is invalid to the extent it fails to state a claim upon which relief may be granted.

FIFTH DEFENSE

The First Amended Consolidated Complaint is invalid to the extent that that General Counsel has pled legal conclusions rather than required factual allegations.

SIXTH DEFENSE

To the extent that any supervisors and/or agents of Named Parties at issue expressed only their views, arguments, or opinions, containing no threat of reprisal or promise of benefits, such statements were protected in their entirety by Section 8(c) of the Act.

SEVENTH DEFENSE

The First Amended Consolidated Complaint is invalid to the extent that any alleged changes to terms or conditions of employment were made in the ordinary course of business and did not alter the course of business or the *status quo ante*.

EIGHTH DEFENSE

During the course of collective bargaining, the Charging Party failed and refused to bargain in good faith with Named Parties in violation of Section 8(b)(3) of the Act.

NINTH DEFENSE

UHS did not employ members of the Unit, singularly or jointly, directly or indirectly, in partnership with GWU, GWUH or any combination thereof.

ANSWERS TO NUMBERED AND UNNUMBERED PARAGRAPHS

Responding to the initial unnumbered paragraph of the First Amended Consolidated Complaint, UHS and GWUH deny that they have violated the Act as alleged therein.

The First Amended Consolidated Complaint defines “Respondent” as “The George Washington University Hospital” (*see* unnumbered first paragraph of First Amended Consolidated Complaint), and UHS and GWUH are relying upon that provided-for definition in responding to the First Amended Consolidated Complaint. To the extent the General Counsel intends to imply that despite the provided-for definition of “Respondent” that UHS is in fact a “Respondent” as that term is subsequently used in the balance of the First Amended Consolidated Complaint (whether based on the case style or something else), UHS denies that it was an “employer,” joint or otherwise, with or without GWUH and/or GWU, of the Unit, and denies all allegations not specifically admitted.

1. Responding to Paragraph 1 of the First Amended Consolidated Complaint, Respondent admits only that the above-styled charges (in their initial and amended forms) reflect that they were filed on the dates set forth therein and that they were subsequently received by Respondent, but Respondent is without knowledge as to the date on which they were posted by U.S. mail, and therefore, denies those allegations.

2. Responding to Paragraph 2 of the First Amended Consolidated Complaint, Respondent admits the allegations contained in subsections (a), (c), (d), (e), and (f); Respondent denies the allegations in subsection (b).

3. Responding to Paragraph 3 of the First Amended Consolidated Complaint, Respondent admits the allegation contained therein.

4. Responding to Paragraph 4 of the First Amended Consolidated Complaint:

(a) Respondent admits only that Ms. Ford occupied the position listed opposite her name from November 2016 through May 12, 2017, and that in that capacity, she was a supervisor and on occasion an agent of Respondent within the meaning of the Act;

(b) Respondent admits only that Ms. Leonard occupied the position listed opposite her name from November 2016 through July 3, 2018, and that in that capacity, she was a supervisor and on occasion an agent of Respondent within the meaning of the Act;

(c) Respondent denies that Ms. Miller occupied the position listed opposite her name, but admits only that she was a supervisor and on occasion an agent of Respondent within the meaning of the Act from November 2016 through May 9, 2017;

(d) Respondent admits only that Ms. Russo occupied the position listed opposite her name from November 2016 through the date of this Answer, and that in that capacity, she served as a supervisor and agent of Respondent;

(e) Respondent denies that Ms. Schmid occupied the position listed opposite her name and further denies that she was a supervisor of Respondent, but admits only that on occasion she was an agent of Respondent within the meaning of the Act from November 2016 through the date of this Answer;

(f) Respondent admits only that Mr. Trump occupied the position listed opposite his name from November 2016 through October 25, 2018, and that in that capacity, he was on occasion an agent of Respondent within the meaning of the Act, but denies that he was a supervisor of Respondent.

5. Responding to Paragraph 5 of the First Amended Consolidated Complaint, Respondent admits only that it designated an Unnamed outside counsel to serve as chief negotiator, that he or she had the authority to act in such capacity, and that he or she was an agent of Respondent within the meaning of Section 2(13) of the Act while acting in such capacity.

6. (a) Responding to Paragraph 6(a) of the First Amended Consolidated Complaint, Respondent admits the allegations set forth therein²;

(b) Responding to Paragraph 6(b) of the First Amended Consolidated Complaint, Respondent admits the allegations set forth therein.

(c) Responding to Paragraph 6(c) of the First Amended Consolidated Complaint, Respondent denies the allegations.

² To the extent alleged or implied, UHS denies that it employed any employees in the Unit.

7. (a) Responding to Paragraph 7(a) of the First Amended Consolidated Complaint, Respondent admits the allegation set forth therein.

(b) Responding to Paragraph 7(b) of the First Amended Consolidated Complaint, Respondent denies the allegations set forth therein.

(c) Responding to Paragraph 7(c) of the First Amended Consolidated Complaint, Respondent denies the allegations set forth therein.

8. (a) Responding to Paragraph 8(a) of the First Amended Consolidated Complaint, Respondent admits the allegations set forth therein.

(b) Responding to Paragraph 8(b) of the First Amended Consolidated Complaint, Respondent admits only that it withdrew recognition from Charging Party on October 26, 2018, and since that date, has refused to bargain with Charging Party since it no longer enjoyed the support of a majority of members of the Unit. Respondent denies the remaining allegations in Paragraph 8(b).

9. (a) Responding to Paragraph 9(a) of the First Amended Consolidated Complaint, Respondent admits only that on or about November 1, 2018, it announced its intent to transition to market-based pay rates and a merit-based pay program and that it implemented a monthly commuter subsidy beginning the November 11, 2018 pay period, and that it did so without affording Charging Party an opportunity to bargain over those issues. Respondent denies the remaining allegations in Paragraph 9(a).

(b) Responding to Paragraph 9(b) of the First Amended Consolidated Complaint, Respondent admits only that wage rates, compensation structure, and transit benefits relate to wages, hours and other terms and conditions of employment and would be a mandatory

subject of bargaining with a representative that enjoyed majority support. Respondent denies the remaining allegations in Paragraph 9(b).

10. Responding to Paragraph 10 of the First Amended Consolidated Complaint, Respondent admits only that on or about November 1, 2018, GWUH announced its intent to transition to market-based pay rates and a merit-based pay program and that it implemented a monthly commuter subsidy beginning the November 11, 2018 pay period, and that it did so without affording Charging Party an opportunity to bargain over those issues. Respondent denies the remaining allegations in Paragraph 10.

11. Responding to Paragraph 11 of the First Amended Consolidated Complaint, Respondent admits only that on or about November 1, 2018, GWUH issued a memorandum to employees that made the true statement that Charging Party did not negotiate a commuter benefit for the Unit and denies the remaining allegations set forth therein.

12. Responding to Paragraph 12 of the First Amended Consolidated Complaint, Respondent denies the allegations contained therein.

13. Responding to Paragraph 13 of the First Amended Consolidated Complaint, Respondent denies the allegations contained therein.

14. Responding to Paragraph 14 of the First Amended Consolidated Complaint, Respondent denies the allegations contained therein.

Responding to the unnumbered prayer for remedial relief that immediately follows Paragraph 14 of the First Amended Consolidated Complaint, Named Parties deny that the General Counsel is entitled to any of the relief sought therein. Named Parties deny each and every allegation not expressly admitted herein.

WHEREFORE, having fully answered the First Amended Consolidated Complaint, Named Parties pray that it be dismissed in its entirety, or in the alternative, that Counsel for the General Counsel be held to strict proof as to all allegations not specifically admitted.

Respectfully submitted this 10th day of June, 2019.

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray

Tammie L. Rattray
Florida Bar No. 0128619
trattray@fordharrison.com
101 E. Kennedy Boulevard, Suite 900
Tampa, Florida 33602
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Paul R. Beshears
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pbshears@fordharrison.com
271 17th St. N.W., Suite 1900
Atlanta, GA 30363
Telephone: (404) 888-3800
Facsimile: (404) 888-3863

Counsel for Respondents Universal Health
Services, Inc. and The George Washington
University Hospital

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2019, I e-filed the foregoing ANSWER AND AFFIRMATIVE DEFENSES OF UNIVERSAL HEALTH SERVICES, INC. AND THE GEORGE WASHINGTON UNIVERSITY HOSPITAL TO THE FIRST AMENDED CONSOLIDATED COMPLAINT with the Region using the Board's e-filing system, and immediately thereafter served it by electronic mail upon the following:

Yahnae Barner
yahnae.barner@1199.org
1199 Service Employees International Union
United Healthcare Workers East, MD/DC Region
611 N. Eutaw Street, Suite 320
Baltimore, MD 21201

Stephen W. Godoff, Esq.
sgodoff@abato.com
Abato, Rubenstein & Abato, P.A
Suite 320
809 Gleneagles Court
Baltimore, MD 21286-2230

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray
Tammie L. Rattray
Florida Bar No. 0128619
trattray@fordharrison.com
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Facsimile: (404) 888-3863

Counsel for Respondents Universal Health
Services, Inc. and George Washington
University Hospital

WSACTIVELLP:10575023.1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND GEORGE
WASHINGTON UNIVERSITY D/B/A THE GEORGE
WASHINGTON UNIVERSITY HOSPITAL

and

Cases 5-CA-216482
5-CA-230128
5-CA-238809

1199 SERVICE EMPLOYEES INTERNATIONAL UNION,
UNITED HEALTHCARE WORKERS EAST, MD/DC
REGION

AFFIDAVIT OF SERVICE OF: Order Referring Petitions to Revoke Subpoenas
Duces Tecum to the Administrative Law Judge

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **June 13, 2019**, I served the above-entitled document(s) **by certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

STEVEN M. BERNSTEIN, ESQ.
MICHAEL S BOHLING, ESQ.
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BALTIMORE, MD 21286-2230

June 13, 2019

Date

Monica Graves
Designated Agent of NLRB

Name

Monica Graves

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

UNIVERSAL HEALTH SERVICES, INC. AND
GEORGE WASHINGTON UNIVERSITY D/B/A THE
GEORGE WASHINGTON UNIVERSITY HOSPITAL

and

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION

Cases 5-CA-216482
5-CA-230128
5-CA-238809

**ORDER REFERRING PETITIONS TO REVOKE SUBPOENAS
DUCES TECUM TO THE ADMINISTRATIVE LAW JUDGE**

About May 31, 2019, Universal Health Services, Inc. and George Washington University d/b/a the George Washington University Hospital (Respondent in the above-captioned matter) served upon 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region (the Charging Party) Subpoena Duces Tecum B-1-1572TK7 (“Respondent’s subpoena,” attached as Exhibit 1), requesting the production of certain records and documents at the hearing scheduled to begin on June 18, 2019.¹ On June 7, Charging Party filed a Petition to Partially Revoke Respondent’s subpoena (Exhibit 2). Also on June 7, counsel for the General Counsel filed a Petition to Partially Revoke Respondent’s subpoena (Exhibit 3). On June 10, Respondent filed an Opposition to Charging Party’s Petition to Partially Revoke (Exhibit 4), and an Opposition to counsel for the General Counsel’s Petition to Partially Revoke (Exhibit 5).

About May 31, counsel for the General Counsel served upon Respondent Subpoena Duces Tecum B-1-15CDYGZ (“CGC’s subpoena,” attached as Exhibit 6). On June 10,

¹ All dates are 2019.

Respondent filed a Petition to Revoke CGC's subpoena (Exhibit 7). On June 12, counsel for the General Counsel filed an Opposition to Respondent's Petition to Revoke (Exhibit 8).

IT IS ORDERED, pursuant to Section 102.31(b) of the Board's Rules and Regulations, Series 8, as amended, that the Petitions and Respondent's and General Counsel's Oppositions be referred to the Administrative Law Judge for presentation and argument by the parties and for ruling.

Dated at Baltimore, Maryland this 13th day of June 2019.

(SEAL)

/s/ SEAN R. MARSHALL

Sean R. Marshall, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, 1199 Service Employees International Union, United Healthcare Workers East, MD/DC RegionAs requested by The George Washington University Hospital

whose address is	<u>900 23rd Street</u>	<u>Washington, DC</u>	<u>20037-2342</u>
	(Street)	(City)	(State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Administrative Law Judge Michael A. Rosas

of the National Labor Relations Board

at Board Hearing Room, Suite 6001, 1015 Half Street, SEin the City of Washington, DC, 20003on June 18, 2019 at 10:00 a.m. or any adjourned

or rescheduled date to testify in Universal Health Services, Inc. and George Washington University d/b/a
The George Washington University Hospital
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

Cases 5-CA-216482, 5-CA-230128 and 5-CA-238809**SEE ATTACHMENT**

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B-1-1572TK7Issued at Washington, D.C.Dated: May 17, 2019

John J. Ring
 John Ring, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND)	
GEORGE WASHINGTON UNIVERSITY)	
D/B/A THE GEORGE WASHINGTON)	
UNIVERSITY HOSPITAL,)	
and)	CASE NOS.
1199 SERVICE EMPLOYEES INTERNATIONAL)	05-CA-216482
UNION, UNITED HEALTHCARE WORKERS)	05-CA-230128
EAST, MD/DC REGION A/W SERVICE)	05-CA-238809
EMPLOYEES INTERNATIONAL UNION.)	

ATTACHMENT TO
SUBPOENA NO. B-1-1572TK7

Instructions for Responding

- a. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- b. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
- c. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- d. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- e. This subpoena applies to documents in your possession, custody, or control.
- f. The term "copy" shall refer to exact and complete copies of original documents, and shall be accepted in lieu of originals, provided that the original documents shall be made available prior to the hearing or at the time of production, for the purposes of verifying the accuracy of such copy or copies.
- g. The singular shall be deemed to include the plural and vice versa.

- h. Any custodian of records of any entity subpoenaed shall be one or more designated agents with knowledge concerning the documents to be produced.
- i. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- j. If any document responsive to any request herein was, but no longer is, in the possession, custody, or control of the person or entity subpoenaed:
 - i. identify the document (stating its date, author, subject, recipients, and intended recipients);
 - ii. explain the circumstances by which the document ceased to be in the possession, custody or control of the person or entity subpoenaed; and
 - iii. identify (stating the person's name, employer title, business address, home address, and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.
- k. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons:
 - i. identify the document (stating its date, author, subject, recipients, and intended recipients);
 - ii. explain the circumstances surrounding the destruction, discarding, or disposal of the documents, including the timing of the destruction, discarding, or disposal of the document; and
 - iii. identify (stating the person's name, employer title, business address, home address, and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody, or control.
- l. The request for documents does not seek documents covered by attorney-client, work-product, or other privileges. If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, identify and describe:
 - i. the author(s);
 - ii. the recipient(s);
 - iii. the date of the original document;
 - iv. the subject matter of the document; and
 - v. the alleged privilege that applies to the document.
- m. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- n. For the purpose of reducing delay and expense, an agent of the GWUH will be available to meet with the person or entity subpoenaed, or a designated or legal representative, at a mutually agreed-upon time and place, prior to the return date of the subpoena, for the

purpose of examining and/or copying the documents subpoenaed, and/or to enter into stipulations concerning the contents of subpoenaed documents.

Definitions

- a. "GWUH" means Universal Health Services, Inc. and George Washington University D/B/A The George Washington University Hospital, jointly and severally.
- b. "1199 SEIU" means 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region A/W Service Employees International Union.
- c. "Employees" means individuals employed by GWUH at any time from October 1, 2016 to present who were represented by 1199 SEIU at any time during such employment.
- d. The "Act" means the National Labor Relations Act, as amended.
- e. "Document" means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- f. "Person" or "persons" means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.

Books, Records, Correspondence, and Documents To Be Produced

1. All notes from bargaining sessions attended by both (i) GWUH and/or its agents and (ii) 1199 SEIU and/or its agents occurring any time from November 22, 2016 to present.¹

¹ This request does not seek any notes that reflect the Union's privileged discussions with its counsel. The request does seek all notes that reflect all non-privileged discussions across the bargaining table.

2. Any evidence that at any time from July 1, 2016 to present GWUH bargained with the Union with no intention of reaching agreement.
3. Any evidence that at any time from July 1, 2016 to present GWUH in its bargaining with 1199 SEIU maintained or adhered to bargaining proposals that provided Employees with fewer rights than afforded to them without a collective bargaining agreement.
4. Any evidence that at any time from July 1, 2016 to present GWUH engaged in regressive bargaining with 1199 SEIU.
5. Any evidence that at any time from July 1, 2016 to present GWUH otherwise failed and refused to bargain collectively and in good faith with 1199 SEIU.
6. Any evidence that at any time from July 1, 2016 to present GWUH interfered with, restrained or coerced employees in exercise of their Section 7 rights.
7. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present undercut any Employee's support of 1199 SEIU.
8. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present brought about Employee disaffection with 1199 SEIU or had a meaningful impact in bringing about Employee disaffection with 1199 SEIU.
9. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present was of a nature that would cause a detrimental or lasting effect on Employees.
10. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present was highly coercive and likely to remain in the memories of Employees for a long time.
11. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present would have a tendency to cause Employee disaffection with 1199 SEIU.
12. Any evidence as to the effect of GWUH's conduct occurring any time from July 1, 2016 to present on Employees' morale, organizational activities, and membership in 1199 SEIU.
13. Any other evidence establishing a causal relationship between the misconduct attributed to GWUH within those allegations set forth in the Complaint and any subsequent loss of employee support for 1199 SEIU.
14. Any evidence that at any time from October 26, 2018 to present GWUH unilaterally implemented changes employee wage rates, compensation structure or transit benefits.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

UNIVERSAL HEALTH SERVICES, INC. AND
GEORGE WASHINGTON UNIVERSITY D/B/A THE
GEORGE WASHINGTON UNIVERSITY HOSPITAL

and

Cases 05-CA-216482
05-CA-230128
05-CA-238809

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

**PETITION TO PARTIALLY REVOKE SUBPOENA DUCES TECUM DIRECTED TO
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

Charging Party, 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region A/W Service Employees International Union (“1199 SEIU”), by its undersigned attorneys, hereby petitions, pursuant to Section 102.66(c) of the Board’s Rules and Regulations, to revoke in part, the Subpoena Duces Tecum issued by the Charging Party, Universal Health Services, Inc. and George Washington University d/b/a The George Washington University Hospital (“George Washington University Hospital”) and directed to 1199 SEIU. The reasons for this Petition to Partially Revoke the Subpoena are as follows:

Factual Background

The dispute that gave rise to the charges at issue here, had its inception in what the Charging Party proposed to be bargaining with the Respondent towards a successor collective bargaining agreement, during the period beginning November 21, 2016 and ending October 12, 2018. In the instant Complaint, however, the General Counsel has alleged that, during this period, Respondent actually only engaged with the Charging Party in surface bargaining by:

- Simultaneously maintaining and adhering to bargaining proposals that provided unit employees with fewer rights than those afforded to them without a collective bargaining agreement, such as a restrictive grievance procedure that does not include binding arbitration, a no-strike provision, and an expansive management's rights clause;
- Engaging in regressive bargaining by proposing that discharges be subject to the grievance-arbitration procedure, and then later proposing that the grievance procedure culminates in non-binding mediation;
- Maintaining and adhering to a proposal to delete the union security clause of the collective bargaining agreement; and
- Maintaining and adhering to wage proposals that give Respondent unfettered discretion.

It is undisputed that on October 26, 2018, Respondent withdrew recognition from the Charging Party. It is undisputed, as well, that at all times since, Respondent has refused to bargain with the Charging Party. And, the General Counsel has alleged that, when it withdrew recognition without remedying its prior unfair labor practices, Respondent further violated Section 8(a)(5) of the Act.

The remaining allegations in the Complaint are that, after withdrawing recognition, Respondent further violated the Act by unilaterally changing the terms and conditions of bargaining unit employees' employment.

Information Sought Does Not Relate to Any Matter Under Investigation or in Question.

Much of the information sought by Respondent's subpoena is in no way related to any matter at issue in the present litigation. And, Section 102.66(c) of the Board's Rules and Regulations provides, in pertinent part, that a subpoena shall be revoked "if the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings..."

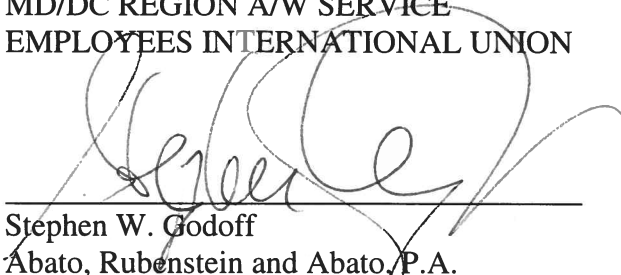
In this connection, we would point out that items 7 through 13 of Respondent's subpoena seek evidence regarding the causal relationship between Respondent's conduct in bargaining and bargaining unit employees' subjective reasons for supporting or opposing the Charging Party. But, the Board has ruled that an employer cannot lawfully withdraw recognition from a union with whom it has unlawfully refused to bargain. *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996) (*Lee Lumber*). The Board has further ruled that where an employer has engaged in an unlawful refusal to bargain with an incumbent union, a causal connection to a union's loss of majority support is to be presumed. *Id.* at 178 ("... we reaffirm the Board's practice of presuming that, when an employer unlawfully fails or refuses to recognize and bargain with an incumbent union, any employee disaffection from union that arises during the course of that failure or refusal results from the earlier unlawful conduct.") And by Board rule, therefore, evidence concerning employees' actual knowledge of an employer's refusal to bargain and evidence of the actual impact of such refusal to bargain on employees' morale, organizational activities, and union membership is simply inadmissible. *Id.* at fn. 23.

The information sought by the Respondent in items 7 through 13 of its subpoena, then, relate only to evidence that, by Board rule, in these proceedings is not in question and cannot be investigated. And, the subpoena, therefore, should be partially revoked as sought herein.

WHEREFORE, 1199SEIU requests that the subpoena duces tecum served on it be partially revoked with respect to items 7 through 13. Further, pursuant to Board Rule 102.31(b), 1199SEIU requests that this Petition to Revoke and any responsive filings be incorporated into the official record of this matter.

Respectfully submitted,

1199 SERVICE EMPLOYEES
INTERNATIONAL UNION, UNITED
HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE
EMPLOYEES INTERNATIONAL UNION



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Baltimore, Maryland 21286
(410) 321-0990
(410) 321-1419
sgodoff@abato.com

Attorneys for 1199SEIU

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June 2019, a copy of the foregoing Petition to Revoke was filed and served electronically using the NLRB's electronic filing system.

Tammie Rattray, Esq.
Ford Harrison LLP
trattray@fordharrison.com

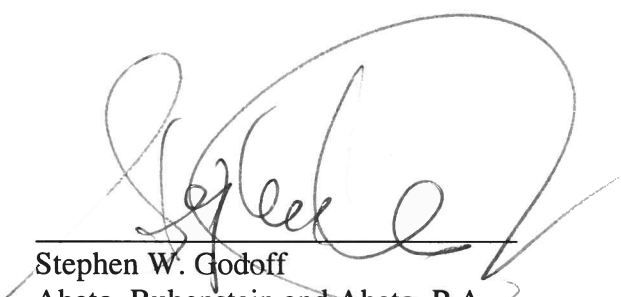
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Nancy Wilson, Acting Regional Director
Barbara Duvall, Esq., Field Attorney
Andrew Andela, Esq., Field Attorney
NLRB Region 5



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Attorneys for 1199SEIU

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNIVERSAL HEALTH SERVICES, INC. AND
GEORGE WASHINGTON UNIVERSITY D/B/A THE
GEORGE WASHINGTON UNIVERSITY HOSPITAL

and

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

Cases 5-CA-216482
5-CA-230128
5-CA-238809

**COUNSEL FOR THE GENERAL COUNSEL’S PETITION TO PARTIALLY
REVOKE RESPONDENT’S SUBPOENA DUCES TECUM B-1572TK7**

Pursuant to Section 102.31 of the National Labor Relations Board’s Rules and Regulations, counsel for the General Counsel files this Petition to Partially Revoke Respondent’s Subpoena Duces Tecum B-1-1572TK7 served on the Charging Party.

I. Background

This matter is scheduled for hearing beginning June 18, 2019. On or about May 30, 2019, The George Washington University Hospital (Respondent) served Subpoena Duces Tecum B-1-1572TK7 (Respondent’s subpoena) on the Custodian of Records for 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region (the Charging Party). A copy of Respondent’s subpoena is attached to this Petition as Exhibit A.

II. Respondent’s Subpoena Should be Revoked to the Extent it Seeks Production of Board Affidavits and other *Jencks* Materials.

Section 102.118(e)(1) of the Board’s Rules and Regulations states that witness statements are not to be provided to Respondent until after a witness called by the General Counsel or the Charging Party testifies at a hearing on direct examination. *See also NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242–43 (1978). Nor may Respondent seek to acquire

witness statements taken by the Board by serving a subpoena duces tecum on a labor organization in possession of those statements prior to the hearing. *See H.B. Zachry Co.*, 310 NLRB 1037, 1038 (1993) (“[T]he Board will not require the production of the affidavit simply because the affiant gave a copy of it to the Charging Party Union.”). Here, Respondent’s subpoena contains overly broad requests that would require the Charging Party to produce Board affidavits and other *Jencks* materials. Each of the requests numbered 2 through 14 in Respondent’s subpoena seeks “any evidence” that Respondent engaged in the conduct alleged in the Complaint. Respondent’s subpoena provides no qualifying or limiting language sufficient to exclude the production of the Board’s confidential materials obtained through its investigation of the unfair labor practice allegations at issue in this case. Accordingly, counsel for the General Counsel requests that Respondent’s subpoena be revoked to the extent it seeks the production of Board affidavits and other *Jencks* materials.

III. Respondent’s Subpoena Should be Revoked to the Extent it Seeks Production of Testimonial and Written Work Product of Board Agents and Attorneys.

Testimonial and written work product of Board agents and Board attorneys is privileged from disclosure. *Hickman v. Taylor*, 329 U.S. 495 (1947); *see also* Fed. R. Civ. P. 26(b)(3). As the Supreme Court explained in *Hickman*, the work product protection encompasses “interviews, statements, memoranda, correspondence, briefs, mental impressions, [and] personal beliefs[.]” *Hickman*, 329 U.S. at 511. The protection afforded work product under Rule 26(b)(3) extends to “materials prepared by agents of the attorney as well as those prepared by the attorney himself.” *U.S. v. Nobles*, 422 U.S. 225, 238–39 (1975). It also continues beyond the litigation for which the documents at issue were prepared. *FTC v. Grolier Inc.*, 462 U.S. 19, 22–28 (1983). Again, each of the requests numbered 2 through 14 in Respondent’s subpoena seeks “any evidence” that Respondent engaged in the conduct alleged in

the Complaint. On this point, the instructions section of Respondent's subpoena expressly states that "the request for documents does not seek documents covered by attorney-client, work product, or other privileges." To the extent that the Charging Party is in possession of any documents constituting the work product of Board agents and attorneys, counsel for the General Counsel asserts privilege and requests that Respondent's subpoena be partially revoked.

IV. Conclusion

For the foregoing reasons, counsel for the General Counsel respectfully requests that Respondent's subpoena be revoked.

Dated at Baltimore, Maryland this 7th day of June 2019.

Respectfully submitted,

/s/ Andrew Andela

Barbara Duvall, Field Attorney
Andrew Andela, Field Attorney
Counsel for the General Counsel
NLRB, Region 5
100 S. Charles St, Tower II, Ste 600
Baltimore, MD 21201

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June 2019, a copy of counsel for the General Counsel's Petition to Partially Revoke Respondent's Subpoena Duces Tecum B-1572TK7 was served electronically on all parties, at the e-mail addresses listed below.

Tammie Rattray, Esq.
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/s/ Andrew Andela

Barbara Duvall, Field Attorney
Andrew Andela, Field Attorney
Counsel for the General Counsel
NLRB, Region 5
Bank of America Center – Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**To Custodian of Records, 1199 Service Employees International Union, United Healthcare Workers East, MD/DC RegionAs requested by The George Washington University Hospital

whose address is 900 23rd Street Washington, DC 20037-2342
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Administrative Law Judge Michael A. Rosas

of the National Labor Relations Board

at Board Hearing Room, Suite 6001, 1015 Half Street, SEin the City of Washington, DC, 20003on June 18, 2019 at 10:00 a.m. or any adjourned

or rescheduled date to testify in Universal Health Services, Inc. and George Washington University d/b/a
The George Washington University Hospital
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

Cases 5-CA-216482, 5-CA-230128 and 5-CA-238809**SEE ATTACHMENT**

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B-1-1572TK7Issued at Washington, D.C.Dated: May 17, 2019

John J. Ring
 John Ring, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT 3

5 of 9

Exhibit A
Page 1 of 5

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND)	
GEORGE WASHINGTON UNIVERSITY)	
D/B/A THE GEORGE WASHINGTON)	
UNIVERSITY HOSPITAL,)	
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1199 SERVICE EMPLOYEES INTERNATIONAL)	05-CA-216482
UNION, UNITED HEALTHCARE WORKERS)	05-CA-230128
EAST, MD/DC REGION A/W SERVICE)	05-CA-238809
EMPLOYEES INTERNATIONAL UNION.)	

ATTACHMENT TO
SUBPOENA NO. B-1-1572TK7

Instructions for Responding

- a. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- b. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
- c. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- d. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- e. This subpoena applies to documents in your possession, custody, or control.
- f. The term "copy" shall refer to exact and complete copies of original documents, and shall be accepted in lieu of originals, provided that the original documents shall be made available prior to the hearing or at the time of production, for the purposes of verifying the accuracy of such copy or copies.
- g. The singular shall be deemed to include the plural and vice versa.

- h. Any custodian of records of any entity subpoenaed shall be one or more designated agents with knowledge concerning the documents to be produced.
- i. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- j. If any document responsive to any request herein was, but no longer is, in the possession, custody, or control of the person or entity subpoenaed:
 - i. identify the document (stating its date, author, subject, recipients, and intended recipients);
 - ii. explain the circumstances by which the document ceased to be in the possession, custody or control of the person or entity subpoenaed; and
 - iii. identify (stating the person's name, employer title, business address, home address, and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.
- k. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons:
 - i. identify the document (stating its date, author, subject, recipients, and intended recipients);
 - ii. explain the circumstances surrounding the destruction, discarding, or disposal of the documents, including the timing of the destruction, discarding, or disposal of the document; and
 - iii. identify (stating the person's name, employer title, business address, home address, and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody, or control.
- l. The request for documents does not seek documents covered by attorney-client, work-product, or other privileges. If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, identify and describe:
 - i. the author(s);
 - ii. the recipient(s);
 - iii. the date of the original document;
 - iv. the subject matter of the document; and
 - v. the alleged privilege that applies to the document.
- m. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.
- n. For the purpose of reducing delay and expense, an agent of the GWUH will be available to meet with the person or entity subpoenaed, or a designated or legal representative, at a mutually agreed-upon time and place, prior to the return date of the subpoena, for the

purpose of examining and/or copying the documents subpoenaed, and/or to enter into stipulations concerning the contents of subpoenaed documents.

Definitions

- a. "GWUH" means Universal Health Services, Inc. and George Washington University D/B/A The George Washington University Hospital, jointly and severally.
- b. "1199 SEIU" means 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region A/W Service Employees International Union.
- c. "Employees" means individuals employed by GWUH at any time from October 1, 2016 to present who were represented by 1199 SEIU at any time during such employment.
- d. The "Act" means the National Labor Relations Act, as amended.
- e. "Document" means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, E-mail communications and records, any marginal or "post-it" or "sticky pad" comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- f. "Person" or "persons" means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.

Books, Records, Correspondence, and Documents To Be Produced

1. All notes from bargaining sessions attended by both (i) GWUH and/or its agents and (ii) 1199 SEIU and/or its agents occurring any time from November 22, 2016 to present.¹

¹ This request does not seek any notes that reflect the Union's privileged discussions with its counsel. The request does seek all notes that reflect all non-privileged discussions across the bargaining table.

2. Any evidence that at any time from July 1, 2016 to present GWUH bargained with the Union with no intention of reaching agreement.
3. Any evidence that at any time from July 1, 2016 to present GWUH in its bargaining with 1199 SEIU maintained or adhered to bargaining proposals that provided Employees with fewer rights than afforded to them without a collective bargaining agreement.
4. Any evidence that at any time from July 1, 2016 to present GWUH engaged in regressive bargaining with 1199 SEIU.
5. Any evidence that at any time from July 1, 2016 to present GWUH otherwise failed and refused to bargain collectively and in good faith with 1199 SEIU.
6. Any evidence that at any time from July 1, 2016 to present GWUH interfered with, restrained or coerced employees in exercise of their Section 7 rights.
7. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present undercut any Employee's support of 1199 SEIU.
8. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present brought about Employee disaffection with 1199 SEIU or had a meaningful impact in bringing about Employee disaffection with 1199 SEIU.
9. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present was of a nature that would cause a detrimental or lasting effect on Employees.
10. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present was highly coercive and likely to remain in the memories of Employees for a long time.
11. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present would have a tendency to cause Employee disaffection with 1199 SEIU.
12. Any evidence as to the effect of GWUH's conduct occurring any time from July 1, 2016 to present on Employees' morale, organizational activities, and membership in 1199 SEIU.
13. Any other evidence establishing a causal relationship between the misconduct attributed to GWUH within those allegations set forth in the Complaint and any subsequent loss of employee support for 1199 SEIU.
14. Any evidence that at any time from October 26, 2018 to present GWUH unilaterally implemented changes employee wage rates, compensation structure or transit benefits.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND)	
GEORGE WASHINGTON UNIVERSITY)	
D/B/A THE GEORGE WASHINGTON)	
UNIVERSITY HOSPITAL,)	
)	
and)	CASE NOS. 05-CA-216482
)	05-CA-230128
1199 SERVICE EMPLOYEES INTERNATIONAL))	05-CA-238809
UNION, UNITED HEALTHCARE WORKERS)	
EAST, MD/DC REGION A/W SERVICE)	
EMPLOYEES INTERNATIONAL UNION.)	

**RESPONDENTS' OPPOSITION TO THE UNION'S PETITION
TO PARTIALLY REVOKE SUBPOENA DUCES TECUM**

COMES NOW Respondents¹ and files this Opposition to the June 6, 2019 Petition to Partially Revoke Subpoena Duces Tecum filed by the Union.

The Union argues the documents sought by items 7 through 13 of Respondents' Subpoena Duces Tecum, which seek evidence regarding the causal relationship between Respondents' and the bargaining unit employees' decision to no longer be represented by Charging Party, are not relevant because, under *Lee Lumber & Building Material Corp.*, 322 NLRB 175 (1996), an employer cannot lawfully withdraw recognition from a union with whom it has unlawfully refused to bargain. Indeed, *Lee Lumber* is the only case the Union cites in support of its Petition to Partially Revoke. *Lee Lumber* does not apply in the instant matter as it involved a general refusal to bargain. In that case the Board took care to make clear the standard it was utilizing would not apply in all employee disaffection cases:

¹ Universal Health Services, Inc. is improperly named; George Washington University Hospital ("GWUH") has proposed a stipulation for correction which has been pending with the General Counsel since June 5. Further, the undersigned does not have any authority to respond on behalf of George Washington University, and therefore, does not do so.

Not every unfair labor practice will taint evidence of a union's subsequent loss of majority support; in cases involving unfair labor practices other than a general refusal to recognize and bargain, there must be specific proof of a causal relationship between the unfair labor practice and the ensuing events indicating a loss of support. In cases involving an 8(a)(5) refusal to recognize and bargain with an incumbent union, however, the causal relationship between unlawful act and subsequent loss of majority support may be presumed.

Lee Lumber, 322 NLRB at 177. Here, the Union concedes in the Factual Background section of its Motion that Respondents and the Charging Party engaged in bargaining for a successor collective-bargaining agreement during the period of November 21, 2016 through about October 12, 2018 (or for approximately two years). Respondents withdrew recognition on October 26, 2018, a mere two weeks after the most recent bargaining session, and without ever refusing to bargain with the Charging Party. There simply is no basis to contend this case involves a general refusal to recognize and bargain. As such, *Lee Lumber* does not apply to this case, and there is no basis for the Union's argument.

The documents sought by items 7 through 13 of Respondents' Subpoena Duces Tecum are relevant to the General Counsel's theory of liability under *Master Slack*, 271 NLRB 78 (1984). In that case, the Board agreed the Administrative Law Judge had properly applied the following factors to determine whether the General Counsel had met its burden to prove a causal relationship between the unfair labor practice and the loss of support:

(1) The length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.

Master Slack, 271 NLRB at 84.

The items in Respondents' Subpoena that the Union seeks to avoid, which follow, are based on these very factors:

7. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present undercut any Employee's support of 1199 SEIU.
8. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present brought about Employee disaffection with 1199 SEIU or had a meaningful impact in bringing about Employee disaffection with 1199 SEIU.
9. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present was of a nature that would cause a detrimental or lasting effect on Employees.
10. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present was highly coercive and likely to remain in the memories of Employees for a long time.
11. Any evidence that GWUH's conduct occurring any time from July 1, 2016 to present would have a tendency to cause Employee disaffection with 1199 SEIU.
12. Any evidence as to the effect of GWUH's conduct occurring any time from July 1, 2016 to present on Employees' morale, organizational activities, and membership in 1199 SEIU.
13. Any other evidence establishing a causal relationship between the misconduct attributed to GWUH within those allegations set forth in the Complaint and any subsequent loss of employee support for 1199 SEIU.

Indeed, items 9, 11, and 12 are direct quotes from the *Master Slack* factors.

The Union apparently argues its Petition should be granted because the Subpoena seeks evidence of the impact of Respondents' alleged unlawful acts on bargaining-unit employees. That evidence is directly relevant. In *Master Slack*, the Administrative Law Judge, over the objection of the General Counsel, accepted testimony from 18 employees explaining why they no longer wanted the union to represent them. Those employees testified that to the extent they had heard about the "NLRB case," "none of those matters had any impact on their signing the petition." *Id.* at 85. Employees testified they signed the petition because "I didn't want the Union; I didn't feel the plant needed a union," and "I just didn't feel like it was doing any good; I just didn't want it here." *Id.* The Board agreed that based on the evidence in the case there was "no basis to disturb the judge's reliance on the unambiguous testimony of the petition's signers that the matters raised in the

prior and pending Board litigation had no impact whatsoever on their signing of the petition” *Id.* at 78, n. 1. Thus, in the very case adopting the *Master Slack* factors, the employees’ subjective reasons for rejecting the union were relevant.

More recently, in *Tenneco Automotive, Inc. v. NLRB*, 716 F.3d 640 (D.C. Cir. 2013), the Court reviewed the Board’s reversal of an Administrative Law Judge’s finding that an employer’s withdrawal of union recognition was lawful. *Id.* at 646. In reversing the Administrative Law Judge, the Board found that the employer’s illegal conduct in committing certain unfair labor practices was responsible for the employees’ disaffection with the union. *Id.*

In noting that both the Administrative Law Judge and the Board applied the *Master Slack* factors but arrived at opposite conclusions, the Court found the Board’s analysis “infirm” because it ignored material evidence that belied any causal connection between the unfair labor practices and the employees’ petition. *Id.* at 649. The Court found it “noteworthy” that the Administrative Law Judge heard and credited testimony from nine of the employees that had signed the petition that the employer’s actions did not influence their decision to sign. *Id.* at 651. While recognizing that the employees’ testimony was “not necessarily dispositive,” it needed to be assessed on a case-by-case basis. *Id.* Because the Board failed to even acknowledge the Administrative Law Judge’s assessment of the employee testimony, the court considered it when deciding that the Board did not have substantial evidence in support of its reversal. *Id.* at 652. In conclusion, the Court observed, “the foregoing considerations, in combination, forcefully contradict the Board’s errant conclusion – based on a shortsighted assessment of the evidence – that [the employer] violated the Act when it withdrew recognition of the Union.” *Id.*; see also *Pittsburgh & New England Trucking Co. v. NLRB*, 643 F.2d 175, 178 (4th Cir. 1981) (Board’s decision cannot be enforced where Administrative Law Judge refused to allow employee testimony concerning whether employer’s

unfair labor practice influenced the signers of the petition; “to bar evidence as to the state of mind of a witness when the issue itself is whether her state of mind towards the Union had been influenced was to deny the Company the most direct proof available on the controverted issue.”); *Automated Business Systems v. NLRB*, 497 F.2d 262, 275 (6th Cir. 1974) (the absence of employee testimony as to the effect of the employer’s conduct on the employees’ support for the union that the employer attempted to present “renders it unlikely that the Board could make a ‘proper analysis of the causal connection between the unfair labor practices and the conclusion that the election process was undermined.’”). Accordingly, the documents sought by Respondents, even if they reveal the subjective beliefs of bargaining-unit employees, are directly relevant.

Further, the Union over-simplifies and misconstrues Request Numbers 7-13. In its Petition, the Union describes the Requests as seeking evidence “regarding the causal relationship between Respondent’s conduct ... and bargaining unit employees’ subjective reasons for supporting or opposing the Charging Party.” *See Petition at p. 3*. Building on top of this faulty premise, the Union then concludes that the information sought by the Subpoena is “simply inadmissible.” *Id.* However, a clear reading of the Requests belies this conclusion. Never, not once, do the Requests at issue inquire as to the subjective beliefs of the employees (although Respondents contend that is indeed relevant, as argued, above, and should be produced). Instead, the Requests ask for “evidence” clearly related to the *Master Slack* factors, and there is no restriction that such evidence is related solely to the subjective understanding or beliefs of the employees. Such evidence could take many forms unrelated to the employees’ subjective perceptions, and documents related to such an argument would be responsive to the very Requests the Union seeks to revoke.

Based on all of the above, the Union’s Petition to Partially Revoke Subpoena Duces Tecum should be denied. It is based entirely on a case that has no bearing on the issues here (*Lee Lumber*).

In addition, the documents sought by Respondents in the Subpoena the Union seeks to revoke are directly relevant to the issues to be decided in this hearing.

Respectfully submitted this 10th day of June, 2019.

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray

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Atlanta, GA 30363
Telephone: (404) 888-3800
Facsimile: (404) 888-3863

Counsel for Respondents Universal Health
Services, Inc. and The George Washington
University Hospital

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2019, I e-filed the foregoing ***RESPONDENTS'***
OPPOSITION TO UNION'S PETITION TO PARTIALLY REVOKE SUBPOENA DUCES
TECUM with the Region using the Board's e-filing system, and immediately thereafter served it
by electronic mail upon the following:

Yahnae Barner
1199 Service Employees International Union
United Healthcare Workers East, MD/DC Region
611 N. Eutaw Street, Suite 320
Baltimore, MD 21201

Stephen W. Godoff, Esq.
Abato, Rubenstein & Abato, P.A
Suite 320
809 Gleneagles Court
Baltimore, MD 21286-2230

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray
Tammie L. Rattray
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10575031

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND)		
GEORGE WASHINGTON UNIVERSITY)		
D/B/A THE GEORGE WASHINGTON)		
UNIVERSITY HOSPITAL,)		
)		
and)	CASE NOS.	05-CA-216482
)		05-CA-230128
1199 SERVICE EMPLOYEES INTERNATIONAL)		05-CA-238809
UNION, UNITED HEALTHCARE WORKERS)		
EAST, MD/DC REGION A/W SERVICE)		
EMPLOYEES INTERNATIONAL UNION.)		

**RESPONDENTS' OPPOSITION TO THE GENERAL COUNSEL'S
PETITION TO PARTIALLY REVOKE SUBPOENA DUCES TECUM**

COMES NOW Respondents¹ and files this Opposition to the June 6, 2019 Petition to Partially Revoke Subpoena Duces Tecum filed by the General Counsel.

The General Counsel argues that documents responsive to the Subpoena Duces Tecum that Respondents served on the Union may be protected from disclosure for two reasons: (1) the Board's prohibition against disclosure of *Jencks* statements and (2) the work-product privilege.

Respondents acknowledge the Board's regulation prohibiting disclosure by the General Counsel of *Jencks* statements until after the witness has testified. Board's Rules and Regulations §102.118(e)(1). Respondents further acknowledge the Board's decision in *H.B. Zachry Co.*, 310 NLRB 1037 (1993), cited by the General Counsel, which holds that a *Jencks* statement that had been provided to the union by the employee making the statement was nonetheless protected from

¹ Universal Health Services, Inc. is improperly named; George Washington University Hospital ("GWUH") has proposed a stipulation for correction which has been pending with the General Counsel since June 5. Further, the undersigned does not have any authority to respond on behalf of George Washington University, and therefore, does not do so.

disclosure. Respondent does not seek production through the Subpoena of any *Jencks* statements that were given to the Union by the employee making the statement.

Respondent may nonetheless be entitled to production of *Jencks* statements in the Union's possession. In *H.B. Zachry Co.*, the Board distinguished a court case holding that the confidentiality of witness statements can be waived when they are released by the government. In that court case, *Martin v. Ronningen Research & Development Co.*, 1 WH Cases2d 176 (W.D. Mich. Oct. 13, 1992), the court held the Secretary of Labor had waived the privilege by releasing the witness statements. The Board in *H.B. Zachry Co.* distinguished the holding in *Ronningen Research* by noting it was not the General Counsel that had released the *Jencks* statements to the Union, but the employee who had testified. The Board in *H.B. Zachry Co.* did not hold that *Jencks* statements provided to the union directly by the General Counsel are protected from disclosure. Accordingly, to the extent the General Counsel seeks to prevent the Union from producing any *Jencks* statement that were provided to the Union by the General Counsel, its Petition should be denied.

In its Petition to Partially Revoke Subpoena Duces Tecum, the General Counsel also seeks to prohibit production of the General Counsel's work product in the possession of the Union. While the General Counsel cites general authority for the proposition that work-product material may be privileged, no authority is cited for the proposition that a third party in possession of the material should be barred from disclosing the material pursuant to a subpoena.

The General Counsel fails to explain how the Union may have come into possession of any work-product material of the General Counsel. The Board's Rules and Regulations appear to prohibit the disclosure of any documents that may constitute work product unless approved in writing by the General Counsel:

Except as provided in §102.117 respecting requests cognizable under the Freedom of Information Act, no present or former employee or specially designated agent of the Agency will produce or present any files, documents, reports, memoranda, or

records of the Board or of the General Counsel, whether in response to a *subpoena duces tecum* or otherwise, without the written consent of the Board or the Chairman of the Board if the document is in Washington, DC, and in control of the Board; or of the General Counsel if the document is in a Regional Office of the Board or is in Washington, DC, and in the control of the General Counsel.

Board's Rules and Regulations §102.118(a). Counsel for the General Counsel has not alleged that the General Counsel provided written consent for the disclosure of any materials to the Union. Absent such written consent, the provision of such materials to the Union would appear to waive any work-product privilege. In that case, Respondents would be entitled to the materials in the Union's possession. Accordingly, the General Counsel's Petition to Partially Revoke Subpoena Duces Tecum should be denied.

Respectfully submitted this 10th day of June, 2019.

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray

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Telephone: (404) 888-3800
Facsimile: (404) 888-3863

Counsel for Respondents Universal Health
Services, Inc. and The George Washington
University Hospital

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2019, I e-filed the foregoing ***RESPONDENTS' OPPOSITION TO GENERAL COUNSEL'S PETITION TO PARTIALLY REVOKE SUBPOENA DUCES TECUM*** with the Region using the Board's e-filing system, and immediately thereafter served it by electronic mail upon the following:

Yahnae Barner
1199 Service Employees International Union
United Healthcare Workers East, MD/DC Region
611 N. Eutaw Street, Suite 320
Baltimore, MD 21201

Stephen W. Godoff, Esq.
Abato, Rubenstein & Abato, P.A
Suite 320
809 Gleneagles Court
Baltimore, MD 21286-2230

FORD & HARRISON LLP

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10575032

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

To Custodian of Records, Universal Health Services, Inc. and George Washington University d/b/a
The George Washington University Hospital, 900 23rd Street, N.W., Washington, DC 20037-2342

As requested by Barbara Duvall, Counsel for General Counsel

whose address is Bank of America Center, Tower II, 100 S. Charles Street, Suite 600, Baltimore, MD 21201
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
 of the National Labor Relations Board

at Board Hearing Room, 6th Floor, 1015 Half Street, S.E.

in the City of Washington, DC

on Tuesday, June 18, 2019 at 10:00 am or any adjourned

Universal Health Services, Inc. and George Washington University d/b/a
The George Washington University Hospital
 or rescheduled date to testify in 05-CA-216482, 05-CA-230128, 05-CA-238809
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

B-1-15CDYGGZ

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

Issued at Baltimore, MD

Dated: May 31, 2019



John F. Ring
 John Ring, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

ATTACHMENT

DEFINITIONS AND INSTRUCTIONS

- a. **“Document”** means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, e-mail communications and records, any marginal or “post-it” or “sticky pad” comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants’ or bookkeepers’ work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- b. **“Communications”** means conversations and correspondence that occur in any form, including but not limited to verbal, written, e-mail, text, voicemail, facsimile, telephonic, in person, and/or through social media.
- c. **“UHS”** means Universal Health Services, Inc.
- d. **“GWU”** means George Washington University.
- e. **“GWUH”** means The George Washington University Hospital.
- f. **“Respondents”** means UHS, GWU, and GWUH.
- g. **“Respondents’ facility”** means the facility located at 900 23rd Street, N.W., Washington, D.C. 20037.
- h. The **“Union”** means 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region a/w Service Employees International Union.
- i. The **“Unit”** means all regular full-time and regular part-time employees of the GWUH in the Environmental Services, Linen Services, Ambulatory Care Center and Food Services Departments of GWUH.

- j. **“Person” or “persons”** means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.
- k. **“Period covered by this subpoena”** means the period from **November 1, 2016** through **June 18, 2019** and the subpoena seeks only documents from that period unless another period is specified. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- l. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
- m. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- n. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- o. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- p. This subpoena applies to documents in your possession, custody, or control.
- q. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.
- r. As to any documents not produced in compliance with this subpoena, on any ground, or if any requested document was, through inadvertence or otherwise, destroyed or is no longer in your possession, state:
 - 1. The author;
 - 2. The recipient;
 - 3. The name of each person to whom the original or a copy was sent;
 - 4. The date of the document;
 - 5. The subject matter of the document; and
 - 6. The circumstances under which the document was destroyed, withheld, or is no longer in your possession.
- s. In lieu of paper production, the General Counsel will accept electronic production of the documents responsive to this subpoena in a mutually agreeable format.

- t. All documents produced pursuant to this subpoena will be reviewed by counsel for the General Counsel and his designee(s).
- u. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS TO BE PRODUCED

1. All documents submitted to Region 5 of the National Labor Relations Board by Respondents or its counsel during the investigation of case numbers 05-CA-216482, 05-CA-230128, and 05-CA-238809, including, but not limited to, position statements and any attachments.

In lieu of providing documents in response to Subpoena Request No. 1, Respondents may stipulate to the authenticity of the documents in the Region's files.

2. All documents showing the ownership and management of GWUH.

In lieu of providing documents in response to Subpoena Request No. 2, Respondents may rescind its Ninth Defense to the Consolidated Complaint and its objection and denial in its Answer to the Consolidated Complaint that UHS is a Respondent.

3. Organizational charts and all other documents that show GWUH's managerial structure, hierarchy or chain of command for the GWUH's facility during the period covered by this subpoena, including documents that show any changes to the reporting protocols and chain of command.
4. Organizational charts and all other documents that show UHS's managerial structure, hierarchy or chain of command in relation to GWUH's facility during the period covered by this subpoena, including documents that show any changes to the reporting protocols and chain of command.
5. Documents that show all wages, benefits, and other compensation paid to Respondents' Lead Negotiator and Counsel during the period covered by this subpoena.
6. Documents that indicate or reflect Respondents' agreements and contracts, including documents showing the duties of Respondents' lead negotiator and counsel during the period covered by this subpoena.

In lieu of providing documents in response to Subpoena Request Nos. 5 and 6, Respondents may rescind its partial denial of paragraphs 5 of the Consolidated Complaint and admit to paragraph 5 of the Consolidated Complaint, admitting that Respondents' Lead Negotiator and Counsel was a Section 2(13) agent of Respondents under the National Labor Relations Act for the period of November 1, 2016 through the date of the hearing.

7. All collective-bargaining agreement(s) between any of the Respondents and the Union, including all tentative agreements, letters of understanding, memoranda of agreement, and documentation extending the collective-bargaining agreement, in effect during the period of time covered by this subpoena.
8. All collective-bargaining proposals exchanged between any of the Respondents and the Union during the period covered by this subpoena, together with documents identifying the date of such proposals, the identity of the party who made each proposal, and all documents showing responses to the proposals.
9. All documents which in any way relate to any collective-bargaining agreement negotiation meetings (the '**Bargaining Sessions**') between the Union and Respondents during the period of time covered by this subpoena, including, but not limited to:
 - a. Documents prepared by Respondents in anticipation of the Bargaining Sessions.
 - b. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents and the Union concerning the Bargaining Sessions.
 - c. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents' supervisors and agents concerning the Bargaining Sessions.
 - d. Notes documenting the Bargaining Sessions.
 - e. List of persons present at each Bargaining Session.
 - f. Documents that show the dates of each Bargaining Session.
 - g. Documents that show the location of each Bargaining Session.
 - h. Documents that show the substance of written or oral proposals, the date and time of each such proposal, and the identity of the representative who made each such proposal at each meeting.
 - i. All communications regarding collective-bargaining sent by or to representatives of Respondent, whether by telephone, in-person, or in writing.
10. The petition Respondents relied upon in withdrawing recognition from the Union (the "**Disaffection Petition**").
11. All documents Respondents used to authenticate the signatures on the Disaffection Petition.
12. All communications between Respondents and the Union related to the Disaffection Petition.
13. For each Unit employee who signed the Disaffection Petition, all documents identifying for each employee:
 - a. Date of hire;
 - b. Job position at time of hire;

- c. Date each employee was eligible to join the Union;
 - d. Job position at time employee purported to sign the Disaffection Petition (the date listed as the signature date for each employee on the Disaffection Petition);
 - e. Personnel file; and
 - f. Letter(s) from the Respondents to the Unit employees offering employment, including all letters setting forth the terms of employment.
14. All documents or bargaining briefs the Respondents disseminated to the Unit concerning:
- a. the status of bargaining;
 - b. the Respondent's bargaining proposals; or
 - c. the Union's bargaining proposals.
15. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, from the period of September 1, 2018 through December 31, 2018:
- a. Unit employees' wage rates;
 - b. Unit employees' compensation structure; and
 - c. Unit employees' transit benefits.
16. The November 1, 2018 memorandum the Respondents disseminated to Unit employees.
17. For all employees that on October 25, 2018 were employed in the following departments of GWUH: Environmental Services, Linen Services, Ambulatory Care Center and Food Services Departments, provide:
- a. Payroll records from period of March 1, 2018 through October 25, 2018;
 - b. Offer of hire letters;
 - c. Promotion letters; and
 - d. Demotion letters.
18. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents' supervisors and agents concerning the Disaffection Petition.
19. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents and Eugene Smith or any other employee of GWUH concerning the Disaffection Petition.
20. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents' supervisors and agents related to the Respondents' validation of signatures on the Disaffection Petition.

21. All documents used or considered by Respondents in the validation of the Disaffection Petition.
22. All documents relied on by Respondents in support of its Affirmative Defense No. 1.
23. All documents relied on by Respondents in support of its Affirmative Defense No. 2.
24. All documents relied on by Respondents in support of its Affirmative Defense No. 3.
25. All documents relied on by Respondents in support of its Affirmative Defense No. 4.
26. All documents relied on by Respondents in support of its Affirmative Defense No. 5.
27. All documents relied on by Respondents in support of its Affirmative Defense No. 6.
28. All documents relied on by Respondents in support of its Affirmative Defense No. 7.
29. All documents relied on by Respondents in support of its Affirmative Defense No. 8.
30. All documents relied on by Respondents in support of its Affirmative Defense No. 9.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNIVERSAL HEALTH SERVICES, INC. AND)	
GEORGE WASHINGTON UNIVERSITY)	
D/B/A THE GEORGE WASHINGTON)	
UNIVERSITY HOSPITAL,)	
)	
and)	CASE NOS. 05-CA-216482
)	05-CA-230128
1199 SERVICE EMPLOYEES INTERNATIONAL)	05-CA-238809
UNION, UNITED HEALTHCARE WORKERS)	
EAST, MD/DC REGION A/W SERVICE)	
EMPLOYEES INTERNATIONAL UNION.)	

PETITION TO REVOKE THE SUBPOENA *DUCES TECUM*
OF THE GENERAL COUNSEL

Pursuant to Section 11(1) of the National Labor Relations Act (“the Act”) and Section 102.31(b) of the National Labor Relations Board’s (“the Board”) Rules and Regulations, Universal Health Services, Inc. (“UHS”) and The George Washington University Hospital (“GWUH”) (collectively, “Respondents”)¹, being in receipt of the Subpoena *Duces Tecum* issued by the General Counsel on May 31, 2019 (“the Subpoena”) and served on June 6, 2019, hereby petition to revoke the Subpoena. (A copy of the Subpoena is attached hereto as *Exhibit A*.)

Following the receipt of the courtesy copy of the Subpoena, counsel for Respondents contacted Counsel for the General Counsel on June 5, 2019, to confer about numerous concerns regarding the scope of the subpoena. While Counsel for the General Counsel initially indicated she would consider at least some of the issues raised, less than 24-hours later, Counsel for the

¹ The term “Respondents” in the Definitions and Instructions section of the Subpoena is defined as UHS, GWUH, and The George Washington University (“GWU”). The undersigned files this response on behalf of UHS and GWUH only and does not represent or purport to represent GWU. To the undersigned’s knowledge, GWU has not been served in this matter. Further, UHS was not an employer and is improperly named, and a proposed stipulation in this regard is currently pending with the Region without response since June 5.

General Counsel cancelled a telephone call that had been scheduled for further discussion of the issues (effectively ending any further conferral and necessitating judicial intervention), and instead, sent the following curt response: “The Region is not limiting its subpoena further than the limitations set forth in the subpoena.” *See Exhibit B, Conferral E-mail*. As such, this Petition to Revoke follows.

I. INTRODUCTION

On March 12, 2018, the 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region A/W Service Employees International Union (“the Union”) filed **Case No. 216482** against GWUH, alleging that it failed to bargain in good faith with the Union by engaging in surface bargaining. The Union amended the charge on September 7, 2018 and again alleged surface bargaining via GWUH’s grievance/arbitration, no-strike, and management rights proposals and the cessation of dues check-off, and regressive bargaining via GWUH’s discipline and grievance/mediation proposals.

On September 25, 2018, the Board issued a Complaint in Case No. 216482, alleging that Respondents failed to engage in good faith bargaining with the Union by engaging in surface bargaining. In its October 5, 2018 Answer, GWUH denied that it had committed any unfair labor practices.

On October 25, 2018, Petitioner Eugene Smith delivered a petition to withdraw from the Union to GWUH’s Chief Executive Officer; the next day, GWUH withdrew recognition. On October 29, 2018, the Union filed **Case No. 230128**, alleging that GWUH failed to bargain in good faith with the union. On April 2, 2019, the Union amended Case No. 230128 to add an allegation specifically contesting the withdrawal of recognition.

Also on April 2, 2019, the Union filed a third charge against GWUH, **Case No. 238809**, alleging that GWUH unlawfully interfered with, restrained, and/or coerced its employees in violation of Section 8(a)(1) of the Act by releasing a memorandum to the Unit employees on wage increases and transit benefits and making unilateral changes by implementing its last wage proposal and providing a transit benefit.

On April 30, 2019, the General Counsel filed her Consolidated Complaint and Notice of Hearing (“Consolidated Complaint”). In the case caption, the employer was listed as “Universal Health Services, Inc. and George Washington University d/b/a The George Washington University Hospital.” The Consolidated Complaint is based on the allegations in Case Nos. 216482, 230128, and 238809.

On May 10, 2019, the Union filed its second amended charge in Case Nos. 216482 and 230128 and first amended charge in Case No. 238809, changing the name of the alleged employer from “The George Washington University Hospital” to “Universal Health Services, Inc. and George Washington University d/b/a The George Washington University Hospital” in conformance with the previously issued Consolidated Complaint.

On May 31, 2019, the General Counsel issued the Subpoena, obtaining service on the Hospital on June 6.

On June 2, 2019, the Union amended Case No. 216482 a third time, adding two new allegations that Respondents maintained and adhered to a: (a) proposal to delete the union security clause; and (b) wage proposal that give the Employer unfettered discretion in determining the wages of bargaining unit employees.

On June 6, 2019, the General Counsel filed and served the First Amended Consolidated Complaint and Notice of Hearing, adding the new allegations from the June 2 charge amendment.

Respondents file this Petition to Revoke the Subpoena *Duces Tecum* on several grounds. First, the definitions and instructions, as well as several of the requests, are overbroad and do not seek information related to any matter under investigation or at issue. The requests are not narrowly drafted to obtain specific information about the relevant subject matter or within the relevant temporal scope of this matter. They are also unduly burdensome in that they require Respondents to search for and compile thousands of pages of documents in a very short period of time while simultaneously preparing for the Hearing set for June 18, 2019. Moreover, many of the requests are seeking documents that are covered by attorney-client and/or work product privileges or are otherwise deemed confidential attorney-client communications.

II. STANDARD FOR REVOCATION

Board Rules provide that:

The administrative law judge or the Board, as the case may be, ***shall revoke the subpoena*** if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid.

29 C.F.R. § 102.31(b) (2019) (emphasis added); *see also* 29 U.S.C. § 161(a) (2019) (“the Board shall revoke such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required.”). Additionally, in ruling upon petitions to revoke subpoenas, the Administrative Law Judge or the Board is entitled to rely upon the Federal Rules of Civil Procedure for guidance concerning the limitations upon the information sought. *See Brink’s Inc.*, 281 NLRB 468 (1986). A request is objectionable and should be revoked if it seeks information that is not

“reasonably relevant” to any allegation in the Complaint. *See Perdue Farms*, 323 NLRB 345, 348 (1997).

Furthermore, materials covered by the attorney work product doctrine or the attorney client privilege are not subject to disclosure. *See Upjohn Corp. v. U.S.*, 449 U.S. 383 (1981); *Patrick Cudahy, Inc.*, 288 NLRB 968 (1988). Additionally, a subpoena *duces tecum* is revocable if it is unreasonably broad or necessary to protect the recipient from “annoyance, embarrassment, oppression, or undue burden or expense.” *See Brink’s, Inc.*, 281 NLRB at 468-69. Subpoenas must be limited to the specific matters at issue in the case and may not be used for a “fishing expedition” through a recipient’s files and records. *See Elite Protective & Sec. Servs., Inc.*, 300 NLRB 832, 832 n. 4 (1990); *Burns Security Servs., Inc.*, 278 NLRB 565, 566 (1986). Indeed, the Board’s Casehandling Manual provides that a subpoena *duces tecum* “should be drafted as narrowly and specifically as is practicable.” NLRB Casehandling Manual § 11776.

III. LEGAL ARGUMENT

A. The Subpoena Should Be Revoked because It Is Overbroad in Its “Definitions and Instructions”

Respondents object to the “Definitions and Instructions” preceding the Requests as grossly overly broad, unduly burdensome, and harassing, and to the extent they purport to place burdens on Respondents that exceed the NLRB’s Rules and Regulations. Respondents specifically object to:

- Definition “a,” which is grossly overbroad, unduly burdensome, harassing, and violative of NLRB rules insofar as it purports to define “Document” to mean “any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, e-mail communications and records, any marginal or ‘post-it’ or ‘sticky pad’ comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of

personal conversations, interviews, meetings, accountants' or bookkeepers' work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party." Of utmost concern is the inclusion of "computer hard drives, discs and/or files and all data contained therein," "work papers," "financial statements," "audio or video tapes and any duplicate copies of any such material."

- Definition "b," which is grossly overbroad, unduly burdensome, harassing, and violative of NLRB rules insofar as it purports to define "Communications" to mean "conversations and correspondence that occur in any form, including but not limited to verbal, written, e-mail, text, voicemail, facsimile, telephonic, in person, and/or through social media."
- Definition "f," which is overbroad in that it purports to include UHS and GWU as Respondents, neither of which employed any members of the bargaining unit. Moreover, Respondents object to this definition to the extent that the Board is implying that there is a single custodian for GWU, GWUH, and UHS. Further, neither UHS nor GWUH can produce records on behalf of GWU.
- Definition "k," which is overly broad in temporal scope insofar as it purports to define the "Period covered by this subpoena" as "November 1, 2016 through June 18, 2019" — the first month of bargaining through the date of the hearing in this matter. The underlying claims in this matter concern alleged actions and conduct that occurred between November 2016 and October 2018, when GWUH withdrew recognition of the Union.
- Instruction "q," which is unduly burdensome to the extent it requires Respondents to produce a privilege log for documents that are clearly privileged pursuant to *Patrick Cudahy, Inc.*, 288 NLRB 968 (1988).
- Instruction "r," which is unduly burdensome and harassing insofar as it purports to require Respondents to provide the following information for "any documents not produced ... on any ground": the author, recipient, name of each person to whom the original or a copy was sent, the date of the document, the subject matter of the document, and the circumstances under which the document was destroyed, withheld, or is no longer in your possession.

Accordingly, the Subpoena should be revoked because the Definitions and Instructions are grossly overly broad, unduly burdensome, and harassing, and because they violate NLRB and federal rules that apply to the production of documents.

B. The Subpoena Should Be Revoked Because It Requests Information That Is Overbroad And Unduly Burdensome.

Respondents object to **Requests Numbers 1, 2, 7-9, 11-14, and 21-30** as overbroad and unduly burdensome to the extent they require Respondent to provide “all” documents or records for a span that covers almost three years. These requests seek “all” documents within the identified category and, for that reason alone, are objectionable. *See* NLRB Casehandling Manual § 11776 (“[t]he use of the word ‘all’ in the description of records should be avoided wherever possible”). Moreover, **Request Numbers 9(b), 9(c), 12, and 18-20** request that Respondents produce “communications,” which, as defined, includes “conversations ... in any form, including but not limited to verbal and ... in-person” In the context of a subpoena *duces tecum*, this request is non-sensical.²

The Subpoena is also unduly burdensome and oppressive because it would require Respondents to gather, review, and compile thousands and thousands of pages of documents to respond to the Subpoena, and do so within a short period of time. Indeed, the Subpoena itself was not properly served upon Respondent GWUH until June 6, yet Counsel for the General Counsel had previously reached out to Respondents’ Counsel for purposes of requesting a review of responsive documents “the week before” the June 18th hearing.

A subpoena should not be enforced if gathering the information would be unduly burdensome. *See EEOC v. McCormick & Schmick’s*, 2007 U.S. Dist. LEXIS 38049 (N.D. Cal. 2007); *see also EEOC v. United Air Lines, Inc.*, 287 F.3d 643 (7th Cir. 2002). A subpoena will be

² During the June 5, 2019 telephone conference that the undersigned initiated to discuss concerns with the General Counsel’s subpoena, Counsel for the General Counsel conceded it would be impossible to produce “verbal” and “in-person” conversations. In her June 6, 2019, e-mail, however, she stated, “The Region is not limiting its subpoena further than the limitations set forth in the subpoena.” Thus, on June 5, Counsel for General Counsel agreed it would be impossible to respond to that aspect of the subpoena, and yet on June 6, refused to consider any modification to this or any other aspect of the subpoena.

found to be unduly burdensome when it results in the disruption of a respondent's business. *See NLRB v. Carolina Food Processors*, 81 F.3d 507 (4th Cir. 1996) quoting *EEOC v. Maryland Cup Corp.*, 785 F.2d 471 (4th Cir. 1986); *see also EEOC v. Bashas', Inc.*, 828 F. Supp. 2d 1056 (Dist. Ariz. 2011). A court may quash a subpoena which subjects a person to undue burden, and may also make any other order which justice requires to protect a party or person from undue burden, oppression, or expense. *See Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 696 (1994). The Board's Subpoena is oppressive and will cause an undue burden to Respondents, as well as the Hospital's counsel, Fisher & Phillips, by seriously disrupting their normal business operations.

Specifically, the Subpoena has requested "communications," to include "e-mail, text and voice-mail" over an overly broad thirty-three month period (November 2016-June 2019), exchanged between the Union and Respondents, including those regarding collective bargaining "sent by or to representatives of Respondent, whether by telephone, in-person, or in writing." *See Definition "b" and "k," as well as Request Nos. 9(b), 9(c), 9(i), 12, and 18-20*. The burden of this request falls largely on the Hospital's Chief Negotiator, Steven Bernstein, who has also continuously served as outside labor counsel to GWUH dating back to 2015.

As explained by Mr. Bernstein, he exchanged 8,406 emails and attachments alone with GWUH representatives during the period in question (3,702 of which were exchanged after the Hospital's October 26 withdrawal of recognition). Mr. Bernstein estimates that at an average rate of 500 documents reviewed per 8-hour business day, it would take a team of a five paralegals 3.36 business days to complete the necessary retrieval, sorting, review, and tagging merely to complete a preliminary analysis of electronic data responsive to Subpoena Request No. 9 (which is an estimated cost of \$26,880.00 for paralegal time alone on this initial phase of work).

In accordance with the Board's *Patrick Cudahy* decision, all such exchanges that are even arguably intertwined with the provision of legal guidance rendered through Mr. Bernstein's role as labor counsel would be subsumed within the attorney-client privilege – thereby requiring them to be separately logged in detail pursuant to Subpoena Instruction q. Mr. Bernstein further estimates that his lead paralegal can log approximately 250 such exchanges over the course of an 8-hour business day – thereby imposing an additional time commitment of approximately 33.6 business days – absent a default privilege designation and simultaneous log generation (which is an estimated cost of \$53,760 for paralegal time alone on this second phase of work).

Therefore, the paralegal time alone on the e-mail retrieval and review is estimated, conservatively, at \$80,640. This does not include Mr. Bernstein's time in reviewing the paralegal's work and preparing the final privilege log and production. This time will be significant and could easily add another \$40,000 in fees to the Hospital by the end of the project, bringing the total cost of just the e-mail production to well over \$100,000.

Hourly rates for these paralegals generally range from \$175 to \$250. Additional expenses will be incurred in the form of \$75 licensing fees (for the month of June alone) for each of the five paralegals who would be called upon to undertake this exercise by way of the "Relativity" platform supplied by Ricoh, the vendor and host provider utilized by Mr. Bernstein's firm, along with a sixth license for Mr. Bernstein himself (\$450 for licensing fees).

Mr. Bernstein further indicates that to the extent that all such documents must nonetheless be printed and shipped for arrival by the morning of the hearing, Ricoh has represented that all responsive documents would have to be definitively tagged by no later than Wednesday, June 12. Otherwise, he would need to transmit the electronic data to a local printing firm for generation by the weekend of June 15th. Although he has yet to obtain an estimate on anticipated printing

expenses, they are expected to be significant. Beyond these burdens and expenditures, Mr. Bernstein has also been called upon to produce approximately 1,000 additional emails and attachments exchanged with Union representatives, along with approximately 40 voice messages left on his office phone by representatives of both the Union and GWUH (the latter of which would presumably be subsumed within the attorney-client privilege as well).

These burdens and expenditures do not even include the process of separately extracting text and voice message data from Mr. Bernstein's cell phone, as implied by Subpoena Definition b. ("text" and "voicemail") and Subpoena Request 9(i) ("by telephone"). There, Mr. Bernstein understands that with respect to his current cell phone, text and voice data is best obtained through iTunes conversion software (during which he would be deprived of the use of his phone) that is extracted through a web-based tool furnished by his firm's host provider (Ricoh) at an estimated expense of \$650, inclusive of a backup drive, technical support, a "cellabrite" spreadsheet report and shipping (with an anticipated three to five day turnaround time). He has also been advised that it would cost another \$450 to obtain a "load file," plus \$250 to load that file on to a review platform (\$1,350 in IT support products).

Upon receipt, a paralegal would then need to devote approximately eight to ten hours of additional time extracting electronic data from the spreadsheet report by way of the review platform (which is an estimated cost of \$1,600.00 for paralegal time). To the extent that any of this data was transmitted by Union (or GWUH) representatives who were not separately saved within Mr. Bernstein's cell phone contacts database, the paralegal would presumably have to run a separate search for those area codes most commonly associated with their geographic locations. Mr. Bernstein suggests that any such search would yield little in the way of relevant information, with the exception of a few privileged exchanges with GWUH, along with a relatively small

number of text messages that would presumably lie also within the Union's possession (and possibly a small number of concise voice messages).

A declaration from Mr. Bernstein is attached to this Petition as *Exhibit C*, and a discussion of the privileged nature of virtually all of these "communications," which ensures that this significant burden outweighs any minimal benefit, is discussed below in Section C.

But the overly broad definition of "communication," is not the only problem with overbreadth with the Subpoena. For example, **Request Number 13** seeks the entire personnel file (subsection (e)), as well as "all documents" that may indicate "(a) date of hire," "(b) job position at time of hire," "(c) date each employee was eligible to join the union," "(d) job position at time employee purported to sign the Disaffection Petition," and "(f) letter(s) from Respondents to the Unit employees offering employment, including all letters setting forth the terms of employment" for all employees who signed the Disaffection Petition. Ninety-one (91)³ employees signed the Petition.

The request for 91 complete personnel files is overly broad and unduly burdensome as it would require GWUH to produce thousands of pages of documents that have no relevance to the underlying Complaint. *See further discussion as to relevance at Section D, below.* Further, searching for all individually requested documents (*e.g.*, offer letters) would require individualized review of those 91 personnel files, as well as other Human Resources sources (as, for example, "date of hire" would appear in multiple places outside of a "personnel file"). As such, this request is unduly burdensome. Notably, during the conferral on June 5, counsel for Respondents asked whether Counsel for the General Counsel would accept an Excel spreadsheet containing the requested data, at least for subsections (a) through (d). While not outright rejected during the call,

³ There are 105 signatures on the Petition; 14 were determined to be duplicates.

apparently, this proposal has been rejected since “The Region is not limiting its subpoena further than the limitations set forth in the subpoena.” *See Exhibit B.*

Similarly, **Request Number 15** requests “documents memorializing, showing, containing, relating to, or reflecting” Unit employees’ wages, compensation structure, and transit benefits. This request is vastly overbroad and unduly burdensome to the extent that the Board is requesting information beyond verifying which Unit employees received compensation and benefits increases after GWUH withdrew recognition of the Union. And similar to **Request Number 13**, an Excel spreadsheet should be a reasonable resolution in lieu of the production of “documents memorializing showing, containing, relate to, or reflecting in whole or in part” the requested information.

In light of the documents already produced and the limited or lack of relevance of the information sought, Respondents should not have to incur the burden of searching for responsive documents.

C. The Subpoena Should Be Revoked because It Requests Information that Is Covered by Attorney-Client Privilege.

Requests Numbers 5 and 6 request documents regarding “wages, benefits, and other compensation paid to Respondents’ Lead Negotiator and Counsel” and documents that reflect “Respondents’ agreements and contracts, including documents showing the duties of Respondent’s’ lead negotiator and counsel....” The Subpoena then states that in lieu of providing documents to these two Requests, Respondents may rescind its partial denial to paragraph 5 of the Complaint and instead admit that Respondents’ Lead Negotiator and Counsel was a Section 2(13) agent of Respondents. However, the requested documents do not have a direct bearing on the Lead Negotiator’s alleged agency status. Moreover, as requested, both UHS and GWUH would have to stipulate to its “Lead Negotiator and Counsel” being a Section 2(13) agent for all purposes, despite

that fact that he could, at best, only serve as an agent while at the bargaining table in the capacity of Lead Negotiator (which is the limited stipulation GWUH was willing to make, but Counsel for the General Counsel ended conferral before this proposal could be tendered).⁴

In addition, **Request Numbers 9(a)-(c) and (i), 18 and 20**⁵ ask for “communications” between the Hospital’s Lead Negotiator and Labor Counsel and his client. Such communications, in addition to being unduly burdensome (as outlined above), are privileged.

The attorney-client privilege essentially prevents compelled disclosure of a document if it constitutes a communication made in confidence to an attorney by a client for the purpose of seeking or obtaining legal advice. *See Patrick Cudahy, Inc.*, 288 NLRB 968 (1988). The Board’s decision in *Cudahy* is directly applicable here. In *Cudahy*, the General Counsel filed a complaint against the employer alleging bad faith bargaining. *Id.* at 968. It then issued a subpoena requesting “bargaining notes, proposals, letters, memoranda, and strategies, relating to Cudahy’s 1986-1987 contract negotiations for a successor agreement with the [u]nion.” *Id.*

The Board held broadly that “the attorney-client privilege encompasses the advice rendered by [counsel] to Cudahy in the course of helping it prepare for and conduct negotiations with the Union and in advising as to legal constraints on the operation of the plant should a strike ensue.” *Id.* at 971. The privilege covers both the communications which provided that advice and the communications that flowed from client to attorney as a basis for generating the advice.” *Id.*, citing *Upjohn Co.*, 449 U.S. at 390 (“the privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to

⁴ Respondents have concurrently filed their Answer to the First Amended Consolidated Complaint. In that Answer, Respondents admit Mr. Bernstein was an agent of GWUH within the meaning of Section 2(13) of the Act while acting in the capacity of GWUH’s Chief Negotiator in negotiations with the Union.

⁵ Other requests may encroach on the attorney-client privilege as well. As just one example, Mr. Bernstein could very easily have a privileged document that “shows” or “contains” the wage rate of a bargaining unit member as requested in Request No. 15(a).

give sound and informed advice”). While GWUH is willing to produce documents that involve communications between Mr. Bernstein and the Union (much of which has already been produced during the Region’s investigation of the Cases and, of course, which should also be in the possession of the Union), his communications away from the table and with his client are clearly privileged and not subject to disclosure. As the Subpoena requests documents clearly covered by the attorney-client privilege, it should be revoked.

D. The Subpoena Should Be Revoked because It Seeks Information that Is Not Relevant to this Matter.

Under Section 11(1) of the Act, NLRB subpoenas must generally: relate to a matter under investigation; or in question in NLRB proceedings. 29 U.S.C. § 161(1); 29 C.F.R. § 102.31(b) and 29 C.F.R. § 102.66(c). The Subpoena is overbroad because it has requested information not reasonably related to the issues raised by the Complaint: whether GWUH failed to bargain in good faith with the Union by (1) engaging in surface bargaining; (2) withdrawing recognition from the Union; and (3) unilaterally implementing wage and benefit increases. In particular, **Subpoena Requests Numbers 10-13 and 17-21** do not relate to any matter pled in the First Amended Complaint. Specifically, the Complaint contains no allegations that Respondents improperly concluded a majority of employees no longer wanted to be represented by the Union.

Accordingly, Respondents object to **Subpoena Requests Numbers 10-13 and 17-21** as they seek information that does not relate to any matter under investigation or in question in the proceedings and are not reasonably calculated to lead to the discovery of any potentially relevant evidence. The information or documents sought in these Requests are unrelated to this case, which concerns only whether Respondents failed to bargain in good faith.

The Board has long held that an employer may withdraw recognition by showing either that the union has actually lost the support of a majority of the bargaining unit employees or that

it has a good-faith doubt, based on objective considerations, of the union's continued majority status. *Celanese Corp.*, 95 NLRB 664 (1951). An employer has no duty to recognize or bargain with a union that represents less than a majority of the employer's employees. *Maramont Corp.*, 317 NLRB 1035, 1035-1036 (1995). Indeed, the Board has held that an employer violates Section 8(a)(2) by recognizing a union that lacks majority support or by continuing to recognize an incumbent union that it knows has lost majority support. *Id.*

GWUH has provided the Board with documentation supporting their valid conclusion that the majority of GWUH employees no longer wished to be represented. Specifically, GWUH submitted an employee petition with signatures of the bargaining unit employees requesting that they no longer be represented by the Union, as well as the exemplars GWUH used to validate those signatures. Notably, even after GWUH provided documentation supporting the validity of the petition, the Complaint does not allege that Respondents' withdrawal of recognition was improper or not compliant with prior Board precedent.⁶ See *Levitz Furniture*, 333 NLRB 717, 717 (2001).

Instead, Counsel for the General Counsel has represented, more than once, that she is proceeding only under a *Master Slack* theory of liability. Specifically, Counsel for the General Counsel alleges that the Respondents commission of a ULP caused the disaffection among the employees; she has never, not once, alleged that the disaffection was not real or that the expression of it via the Petition was procedurally infirm.

Because Counsel for the General Counsel has never alleged an issue under *Levitz Furniture*, the Subpoena should be revoked to the extent the requests relate solely to such a claim. Counsel for the General Counsel is not entitled to conduct a fishing expedition.

⁶ See also, Respondents letter to Administrative Law Judge Michael Rosas, filed June 7, 2019, which further discusses the threshold issue involving the General Counsel's theory of the case.

Request Numbers 4-6 and 22-28 are equally irrelevant, inquiring into an entity which did not employ members of the bargaining unit, seeking documents related to Mr. Bernstein's retention as Lead Negotiator and Labor Counsel, and demanding documents "relied upon" by Respondents in the pleading of purely legal defenses (*e.g.*, 10(b)(6) and "failure to state a claim").

E. The Board Subpoena Should Be Revoked to the Extent It Seeks Confidential Information.

Request Numbers 15(a) and 17(a) of the Subpoena request documents setting forth the wage and/or salary paid to each individual within the Unit. Though whether GWUH improperly compensated individuals within Unit (*i.e.*, hourly wages or benefits) may be relevant, the discrete wages and/or salaries paid to individuals within the Unit do not relate to any of the aforementioned issues raised in the Complaint. The Subpoena should be revoked to the extent that it seeks information that is confidential.

F. The Timing of the Subpoena Renders It Unduly Burdensome.

Although this Hearing has been set for over three months, the Subpoena was not served until June 6, 2019 and it demands that Respondents appear on June 18, a mere 12 days later. Respondents object to the Subpoena's demand to appear with less than two weeks' notice with the requested, voluminous, and irrelevant documents. Had the Subpoena be tailored and limited to focus on relevant, non-privileged documents, it would not interfere with the Hearing as scheduled.

IV. CONCLUSION

Given that the wide-ranging, 30-part Subpoena is unduly burdensome and seeks information that is overbroad, irrelevant, and oftentimes privileged, Respondents' Petition to Revoke the Subpoena *Duces Tecum* served on June 6, 2019 should be granted.

Respectfully submitted this 10th day of June, 2019.

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray

Tammie L. Rattray
Florida Bar No. 0128619
trattray@fordharrison.com
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Tampa, Florida 33602
Telephone: (813) 261-7800
Facsimile: (813) 261-7899

Paul R. Beshears
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271 17th St. N.W., Suite 1900
Atlanta, GA 30363
Telephone: (404) 888-3800
Facsimile: (404) 888-3863
Counsel for Respondents Universal Health
Services, Inc. and The George Washington
University Hospital

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2019, I e-filed the foregoing PETITION TO REVOKE THE SUBPOENA *DUCES TECUM* OF THE GENERAL COUNSEL with the Region using the Board's e-filing system, and immediately thereafter served it by electronic mail upon the following:

Yahnae Barner
1199 Service Employees International Union
United Healthcare Workers East, MD/DC Region
611 N. Eutaw Street, Suite 320
Baltimore, MD 21201

Stephen W. Godoff, Esq.
Abato, Rubenstein & Abato, P.A
Suite 320
809 Gleneagles Court
Baltimore, MD 21286-2230

FORD & HARRISON LLP

By: /s/ Tammie L. Rattray

Tammie L. Rattray
Florida Bar No. 0128619
trattray@fordharrison.com
101 E. Kennedy Boulevard, Suite 900
Tampa, Florida 33602
Telephone: (813) 261-7800
Facsimile: (813) 261-7899

SUBPOENA DUCES TECUM**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

To Custodian of Records, Universal Health Services, Inc. and George Washington University d/b/a
The George Washington University Hospital, 900 23rd Street, N.W., Washington, DC 20037-2342

As requested by Barbara Duvall, Counsel for General Counsel

whose address is Bank of America Center, Tower II, 100 S. Charles Street, Suite 600, Baltimore, MD 21201
 (Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE an Administrative Law Judge
 of the National Labor Relations Board

at Board Hearing Room, 6th Floor, 1015 Half Street, S.E.

in the City of Washington, DC

on Tuesday, June 18, 2019 at 10:00 am or any adjourned

Universal Health Services, Inc. and George Washington University d/b/a
The George Washington University Hospital

or rescheduled date to testify in 05-CA-216482, 05-CA-230128, 05-CA-238809
 (Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

SEE ATTACHMENT

If you do not intend to comply with the subpoena, within 5 days (excluding intermediate Saturdays, Sundays, and holidays) after the date the subpoena is received, you must petition in writing to revoke the subpoena. Unless filed through the Board's E-Filing system, the petition to revoke must be received on or before the official closing time of the receiving office on the last day for filing. If filed through the Board's E-Filing system, it may be filed up to 11:59 pm in the local time zone of the receiving office on the last day for filing. Prior to a hearing, the petition to revoke should be filed with the Regional Director; during a hearing, it should be filed with the Hearing Officer or Administrative Law Judge conducting the hearing. See Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings) and 29 C.F.R. Section 102.111(a)(1) and 102.111(b)(3) (time computation). Failure to follow these rules may result in the loss of any ability to raise objections to the subpoena in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B-1-15CDYGGZ

Issued at Baltimore, MD

Dated: May 31, 2019



John F. Ring
 John Ring, Chairman

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

EXHIBIT 7

Page 18 of 32

EXHIBIT A

ATTACHMENT

DEFINITIONS AND INSTRUCTIONS

- a. **“Document”** means any existing printed, typewritten or otherwise recorded material of whatever character, records stored on computer or electronically, records kept on microfiche or written by hand or produced by hand and graphic material, including without limitation, checks, cancelled checks, computer hard drives, discs and/or files and all data contained therein, computer printouts, e-mail communications and records, any marginal or “post-it” or “sticky pad” comments appearing on or with documents, licenses, files, letters, facsimile transmissions, memoranda, telegrams, minutes, notes, contracts, agreements, transcripts, diaries, appointment books, reports, records, payroll records, books, lists, logs, worksheets, ledgers, summaries of records of telephone conversations, summaries of records of personal conversations, interviews, meetings, accountants’ or bookkeepers’ work papers, records of meetings or conference reports, drafts, work papers, calendars, interoffice communications, financial statements, inventories, news reports, periodicals, press releases, graphs, charts, advertisements, statements, affidavits, photographs, negatives, slides, disks, reels, microfilm, audio or video tapes and any duplicate copies of any such material in the possession of, control of, or available to the subpoenaed party, or any agent, representative or other person acting in cooperation with, in concert with or on behalf of the subpoenaed party.
- b. **“Communications”** means conversations and correspondence that occur in any form, including but not limited to verbal, written, e-mail, text, voicemail, facsimile, telephonic, in person, and/or through social media.
- c. **“UHS”** means Universal Health Services, Inc.
- d. **“GWU”** means George Washington University.
- e. **“GWUH”** means The George Washington University Hospital.
- f. **“Respondents”** means UHS, GWU, and GWUH.
- g. **“Respondents’ facility”** means the facility located at 900 23rd Street, N.W., Washington, D.C. 20037.
- h. The **“Union”** means 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region a/w Service Employees International Union.
- i. The **“Unit”** means all regular full-time and regular part-time employees of the GWUH in the Environmental Services, Linen Services, Ambulatory Care Center and Food Services Departments of GWUH.

- j. **“Person” or “persons”** means natural persons, corporations, limited liability companies, partnerships, sole proprietorships, associations, organizations, trusts, joint ventures, groups of natural persons or other organizations, or any other kind of entity.
- k. **“Period covered by this subpoena”** means the period from **November 1, 2016** through **June 18, 2019** and the subpoena seeks only documents from that period unless another period is specified. This subpoena request is continuing in character and if additional responsive documents come to your attention after the date of production, such documents must be promptly produced.
- l. Any copies of documents that are different in any way from the original, such as by interlineation, receipt stamp, notation, or indication of copies sent or received, are considered original documents and must be produced separately from the originals.
- m. If any document covered by this subpoena contains codes or classifications, all documents explaining or defining the codes or classifications used in the document must also be produced.
- n. Electronically stored information should be produced in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- o. All documents produced pursuant to this subpoena should be presented as they are kept in the usual course of business or organized by the subpoena paragraph to which the document or set of documents is responsive.
- p. This subpoena applies to documents in your possession, custody, or control.
- q. If a claim of privilege is made as to any document which is the subject of this subpoena, a claim of privilege must be expressly made and you must describe the nature of the withheld document, communication, or tangible thing in a manner that, without revealing information itself privileged or protected, will enable an assessment of the claim to be made.
- r. As to any documents not produced in compliance with this subpoena, on any ground, or if any requested document was, through inadvertence or otherwise, destroyed or is no longer in your possession, state:
 - 1. The author;
 - 2. The recipient;
 - 3. The name of each person to whom the original or a copy was sent;
 - 4. The date of the document;
 - 5. The subject matter of the document; and
 - 6. The circumstances under which the document was destroyed, withheld, or is no longer in your possession.
- s. In lieu of paper production, the General Counsel will accept electronic production of the documents responsive to this subpoena in a mutually agreeable format.

- t. All documents produced pursuant to this subpoena will be reviewed by counsel for the General Counsel and his designee(s).
- u. Unless otherwise stated, this subpoena does not supersede, revoke or cancel any other subpoena(s) previously issued in this proceeding.

DOCUMENTS TO BE PRODUCED

1. All documents submitted to Region 5 of the National Labor Relations Board by Respondents or its counsel during the investigation of case numbers 05-CA-216482, 05-CA-230128, and 05-CA-238809, including, but not limited to, position statements and any attachments.

In lieu of providing documents in response to Subpoena Request No. 1, Respondents may stipulate to the authenticity of the documents in the Region's files.

2. All documents showing the ownership and management of GWUH.

In lieu of providing documents in response to Subpoena Request No. 2, Respondents may rescind its Ninth Defense to the Consolidated Complaint and its objection and denial in its Answer to the Consolidated Complaint that UHS is a Respondent.

3. Organizational charts and all other documents that show GWUH's managerial structure, hierarchy or chain of command for the GWUH's facility during the period covered by this subpoena, including documents that show any changes to the reporting protocols and chain of command.
4. Organizational charts and all other documents that show UHS's managerial structure, hierarchy or chain of command in relation to GWUH's facility during the period covered by this subpoena, including documents that show any changes to the reporting protocols and chain of command.
5. Documents that show all wages, benefits, and other compensation paid to Respondents' Lead Negotiator and Counsel during the period covered by this subpoena.
6. Documents that indicate or reflect Respondents' agreements and contracts, including documents showing the duties of Respondents' lead negotiator and counsel during the period covered by this subpoena.

In lieu of providing documents in response to Subpoena Request Nos. 5 and 6, Respondents may rescind its partial denial of paragraphs 5 of the Consolidated Complaint and admit to paragraph 5 of the Consolidated Complaint, admitting that Respondents' Lead Negotiator and Counsel was a Section 2(13) agent of Respondents under the National Labor Relations Act for the period of November 1, 2016 through the date of the hearing.

7. All collective-bargaining agreement(s) between any of the Respondents and the Union, including all tentative agreements, letters of understanding, memoranda of agreement, and documentation extending the collective-bargaining agreement, in effect during the period of time covered by this subpoena.
8. All collective-bargaining proposals exchanged between any of the Respondents and the Union during the period covered by this subpoena, together with documents identifying the date of such proposals, the identity of the party who made each proposal, and all documents showing responses to the proposals.
9. All documents which in any way relate to any collective-bargaining agreement negotiation meetings (the '**Bargaining Sessions**') between the Union and Respondents during the period of time covered by this subpoena, including, but not limited to:
 - a. Documents prepared by Respondents in anticipation of the Bargaining Sessions.
 - b. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents and the Union concerning the Bargaining Sessions.
 - c. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents' supervisors and agents concerning the Bargaining Sessions.
 - d. Notes documenting the Bargaining Sessions.
 - e. List of persons present at each Bargaining Session.
 - f. Documents that show the dates of each Bargaining Session.
 - g. Documents that show the location of each Bargaining Session.
 - h. Documents that show the substance of written or oral proposals, the date and time of each such proposal, and the identity of the representative who made each such proposal at each meeting.
 - i. All communications regarding collective-bargaining sent by or to representatives of Respondent, whether by telephone, in-person, or in writing.
10. The petition Respondents relied upon in withdrawing recognition from the Union (the '**Disaffection Petition**').
11. All documents Respondents used to authenticate the signatures on the Disaffection Petition.
12. All communications between Respondents and the Union related to the Disaffection Petition.
13. For each Unit employee who signed the Disaffection Petition, all documents identifying for each employee:
 - a. Date of hire;
 - b. Job position at time of hire;

- c. Date each employee was eligible to join the Union;
 - d. Job position at time employee purported to sign the Disaffection Petition (the date listed as the signature date for each employee on the Disaffection Petition);
 - e. Personnel file; and
 - f. Letter(s) from the Respondents to the Unit employees offering employment, including all letters setting forth the terms of employment.
14. All documents or bargaining briefs the Respondents disseminated to the Unit concerning:
- a. the status of bargaining;
 - b. the Respondent's bargaining proposals; or
 - c. the Union's bargaining proposals.
15. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, from the period of September 1, 2018 through December 31, 2018:
- a. Unit employees' wage rates;
 - b. Unit employees' compensation structure; and
 - c. Unit employees' transit benefits.
16. The November 1, 2018 memorandum the Respondents disseminated to Unit employees.
17. For all employees that on October 25, 2018 were employed in the following departments of GWUH: Environmental Services, Linen Services, Ambulatory Care Center and Food Services Departments, provide:
- a. Payroll records from period of March 1, 2018 through October 25, 2018;
 - b. Offer of hire letters;
 - c. Promotion letters; and
 - d. Demotion letters.
18. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents' supervisors and agents concerning the Disaffection Petition.
19. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents and Eugene Smith or any other employee of GWUH concerning the Disaffection Petition.
20. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents' supervisors and agents related to the Respondents' validation of signatures on the Disaffection Petition.

21. All documents used or considered by Respondents in the validation of the Disaffection Petition.
22. All documents relied on by Respondents in support of its Affirmative Defense No. 1.
23. All documents relied on by Respondents in support of its Affirmative Defense No. 2.
24. All documents relied on by Respondents in support of its Affirmative Defense No. 3.
25. All documents relied on by Respondents in support of its Affirmative Defense No. 4.
26. All documents relied on by Respondents in support of its Affirmative Defense No. 5.
27. All documents relied on by Respondents in support of its Affirmative Defense No. 6.
28. All documents relied on by Respondents in support of its Affirmative Defense No. 7.
29. All documents relied on by Respondents in support of its Affirmative Defense No. 8.
30. All documents relied on by Respondents in support of its Affirmative Defense No. 9.

Tammie Rattray

From: Duvall, Barbara <Barbara.Duvall@nlrb.gov>
Sent: Thursday, June 6, 2019 11:21 AM
To: Tammie Rattray
Cc: Paul Beshears; Andela, Andrew
Subject: RE: Our call

Ms. Rattray,

In addition to the certified mailing, the subpoena is being hand-delivered today. You will have service complete today. As to your inquiries:

1. I will get back to you about your proposed stipulation.
 2. The Region is not limiting its subpoena further than the limitations set forth in the subpoena.
-

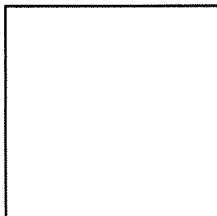
If you have a question that I have not addressed in here, please email me and I will endeavor to respond to you tonight.

Best,
Barbara

From: Tammie Rattray <TRATTRAY@Fordharrison.com>
Sent: Thursday, June 6, 2019 11:09 AM
To: Duvall, Barbara <Barbara.Duvall@nlrb.gov>; Andela, Andrew <Andrew.Andela@nlrb.gov>
Cc: Paul Beshears <pbshears@fordharrison.com>
Subject: RE: Our call

Is there another time that will work for you, as obviously, all of these matters are time sensitive? Will you be getting back to me, at least via e-mail, as to some of the issues we discussed yesterday? I would think that you could at least track the subpoena and advise as to the status there. If you are too busy to do so, please forward the tracking number, and I'll be happy to do it.

Tammie



Tammie L. Rattray - Attorney at Law
Board Certified Specialist, Labor & Employment Law



101 E. Kennedy Boulevard, Suite 900 | Tampa, FL 33602
TRATTRAY@Fordharrison.com | P: 813-261-7828



LTC4 Certified Legal Professional | *FHPromise*

From: Duvall, Barbara [mailto:Barbara.Duvall@nlrb.gov]
Sent: Thursday, June 6, 2019 11:07 AM
To: Tammie Rattray <TRATTRAY@Fordharrison.com>; Andela, Andrew <Andrew.Andela@nlrb.gov>

Cc: Paul Beshears <pbshears@fordharrison.com>

Subject: RE: Our call

Mr. Rattray,

I was just in the process of sending you an email. Drew and I are no longer available for a call at 4 p.m. today.

Best,
Barbara

From: Tammie Rattray <TRATTRAY@Fordharrison.com>

Sent: Thursday, June 6, 2019 11:04 AM

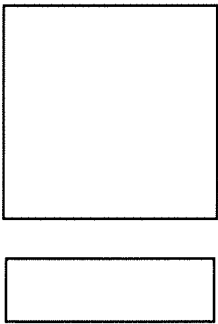
To: Duvall, Barbara <Barbara.Duvall@nlrb.gov>; Andela, Andrew <Andrew.Andela@nlrb.gov>

Cc: Paul Beshears <pbshears@fordharrison.com>

Subject: Our call

I just saw your e-mail to Ms. Jenkins. I would be happy to use our time already reserved at 4:00 today for a call with the ALJ. Shall I advise him of that availability?

Tammie



Tammie L. Rattray - Attorney at Law
Board Certified Specialist, Labor & Employment Law



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LTC4 Certified Legal Professional | *FHPromise*

ATTORNEY WORK PRODUCT - PRIVILEGED & CONFIDENTIAL

The information contained in this message from Ford & Harrison LLP and any attachments are privileged and confidential and intended only for the named recipient(s). If you have received this message in error, you are prohibited from reviewing, copying, distributing or using the information. Please contact the sender immediately by return email and delete the original message and attachments. In the absence of an executed engagement letter or fee contract, no attorney client relationship is established by this communication.

STATE OF FLORIDA)
)
COUNTY OF HILLSBOROUGH)

DECLARATION OF STEVEN BERNSTEIN

I, Steven Bernstein, being of the age of majority and suffering from no legal disabilities, certify as follows:

1.

I am a licensed attorney in the State of Florida and a partner with the law offices of Fisher & Phillips LLP. I am giving this statement based upon my own personal knowledge.

2.

I have continuously served as outside labor counsel to George Washington University Hospital ("the Hospital") dating back to 2015, and was also designated to serve as the Hospital's Chief Negotiator in connection with its most recent negotiations for a renewed collective bargaining agreement with SEIU United Healthcare Workers East ("the Union") which took place between November of 2016 and October of 2018. Aspects of those negotiations are the subject of unfair labor practice charges forming the basis of an Amended Consolidated Complaint filed by the NLRB in Case Nos. 5-CA-216482, 230128, and 238809 ("the Complaint").

3.

On May 31, 2019, Counsel for the General Counsel issued Subpoena No. B-1-15CDYGGZ ("the subpoena"), pursuing discovery in connection with the Complaint. I received an electronic copy of this subpoena by way of email from Counsel for the General Counsel at 1:34 p.m. that afternoon. I understand that the subpoena was served on the Hospital on June 6th.

4.

Item b. of the Definitions section and item 9. of the Request section suggest that the subpoena seeks to obtain "communications" (including text messages and voicemails) exchanged between myself (while acting as a bargaining "representative") and both the Hospital and the Union which in any way relate to the above-referenced collective bargaining sessions. Upon receiving the courtesy copy, I consulted with members of our firm's Information Technology and E-Discovery departments to ascertain the time, money and resources needed to undertake a response to subpoena request no. 9. On Monday, June 3rd, they undertook a review of our email server (utilizing email addresses I had furnished them for all Union and Hospital representatives with whom I dealt throughout the collective bargaining period).

5.

On June 5th, they advised me that I had exchanged 8,406 emails and attachments with GWUH representatives during the period in question, along with 1,433 emails and attachments with Union and NLRB representatives (approximately 1,000 of which I had estimated as being associated with the Union), and had also received 40 voice-mails left at my office number. The following day, I learned that 3,702 of the 8,406 emails and attachments exchanged with Hospital representatives occurred after the October 26 withdrawal of recognition.

6.

I then asked our lead paralegal to estimate the average number of emails that he (and his counterparts in other offices) could typically review for responsiveness to an average discovery request over the course of an uninterrupted eight-hour business day, and he responded with a figure of 500. I asked him how many additional paralegals he would need to undertake this project within the time constraints imposed by the subpoena, and he indicated that he would need a team of five (including himself).

-2-

7.

Based on those assumptions, including a team of five paralegals working uninterrupted for eight hours per business day, we anticipated that it would take 3.36 business days to complete the initial stage of the project, which consists of retrieving, sorting, reviewing and tagging all responsive exchanges utilizing the “Relativity” platform available through our host vendor (Ricoh). Truncating the search to the period ending November 1, 2018 would reduce that figure to just under two business days. The hourly rates for these paralegals generally range from \$175 to \$250, depending on their locale and experience. Additional expenses would be incurred in the form of \$75 licensing fees (for the month of June alone) for each of the five paralegals who would be called upon to undertake this exercise, and a sixth monthly license for myself (for purposes of reviewing any “close calls” with respect to responsiveness).

8.

Assuming that all (or at least the vast majority) of exchanges with Hospital representatives would then need to be logged as privileged pursuant to Subpoena Instruction q., I then asked our lead paralegal to estimate the average number of log entries he could complete (utilizing the parameters set forth within that Instruction) over the course of an uninterrupted eight-hour business day, and he responded with a figure of approximately 250. Based on that response, together we estimated that the second, privilege log phase of the project would take him approximately 33.6 days to complete – unless we were able to bypass that burden by automatically defaulting to a privilege designation for all Hospital exchanges – while simultaneously generating a privilege log entry on the Relativity platform.

9.

Although it would be relatively easy to electronically transmit the privilege log for local printing upon completion, the responsive emails and attachments (including those logged as privileged) impose additional burdens and expense. The most direct option would be to utilize our host/vendor (Ricoh) for this function, as the documents are already on their platform. Their representatives advised us however, that their printing capabilities were located in another part of the country, and for that reason they would need to ship them well in advance.

10.

The Ricoh representatives also advised our firm that they could not guarantee arrival in D.C. by the afternoon prior to the hearing unless all responsive documents were tagged by no later than Wednesday, June 12th. As of the date of this declaration, that solution was not deemed feasible, and for that reason we are now undertaking a search of local D.C. firms that can complete the printing phase of the project on a timely basis (most likely by performing the work over the weekend of June 15th) – at a significant cost that has not yet been determined.

11.

As presently worded, the scope of the subpoena is not confined to my office email and voicemail exchanges, giving rise to the possibility that Counsel for the General Counsel also seeks text and voicemail data from the personal iPhone that I am using, pursuant to Definition b. ("text" and "voicemail") and Request 9(i) ("by telephone"). To my knowledge, any such text or voice messages could only be accessed at this stage by extracting the data.

12.

During the week of June 3rd, I consulted with members of our firm's IT and E-Discovery departments in an effort to ascertain what would be involved in that aspect of the process (assuming the subpoena were to extend in that direction). They advised me that for these

purposes, text and voice data is best obtained through iTunes conversion software (during which I would be deprived of the use of my phone), extracted through a web-based tool furnished by Ricoh at a cost of \$650, inclusive of backup drive, technical support, a “cellabrite” spreadsheet report and shipping costs (with an anticipated 3-5 day turnaround time). Beyond that, I was advised that it would cost another \$450 to obtain a “load file,” plus \$250 to load that file onto a review platform so that our paralegal could convert the data to a text image.

13.

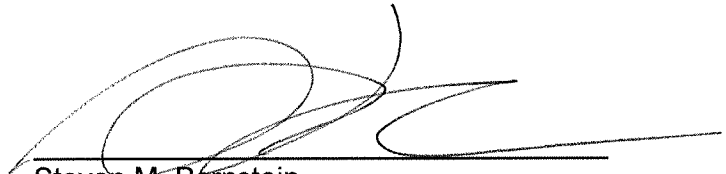
Upon receipt of the hard drive, our lead paralegal would need to upload it onto a desktop for purposes of accessing a summary of the contents in spreadsheet format. He would then need to devote approximately eight to ten hours of time (at an hourly rate of \$215) extracting electronic data from the spreadsheet report using the review platform. The process would be more time-consuming with respect to text and voice messages involving Union (or Hospital) representatives who were not saved to my contacts database – necessitating a separate search for those area codes most commonly associated with their geographic locations.

14.

To the best of my recollection, I exchanged relatively few texts over the course of our bargaining sessions with the Union, with the exception of a few messages reviewing the status of our respective committees on those days when negotiations were in session (which presumably would also be in the Union’s possession), along with an even smaller number of voice messages asking that I return their calls. Any text or voice messages exchanged between Hospital representatives and myself would presumably benefit from protection of both the attorney-client privilege and the model rules regarding confidential communications– which I have not been authorized to waive.

This concludes my declaration.

I have read the preceding declaration consisting of fourteen paragraphs and swear that it is true and correct to the best of knowledge.



Steven M. Bernstein

6/9/19

Date

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNIVERSAL HEALTH SERVICES, INC. AND
GEORGE WASHINGTON UNIVERSITY D/B/A THE
GEORGE WASHINGTON UNIVERSITY HOSPITAL

Case 5-CA-216482
5-CA-230128
5-CA-238809

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

**OPPOSITION TO RESPONDENT’S PETITION TO REVOKE THE
SUBPOENA *DUCES TECUM* OF THE GENERAL COUNSEL**

Counsel for the General Counsel (the “CGC”) hereby opposes Respondent’s Petition to Revoke Subpoena *Duces Tecum* No. B-1-15CDYGG (the “PRV”), and respectfully moves for an Order denying Respondent’s PRV.

**I.
INTRODUCTION**

On March 12, 2018, 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region a/w Service Employees International Union (the “Union”) filed an unfair labor practice charge against Respondent in case 5-CA-216482. The Union filed a first amended charge on September 7, 2018. The NLRB Region 5 office found merit to the Union’s first amended charge and issued a Complaint and Notice of Hearing on September 25, 2018. Respondent filed its Answer and Affirmative Defenses to the Complaint on October 5, 2018, denying in whole or in part, and/or claiming lack of knowledge to paragraphs 1, 4-5, 7(b)-(c), and 8-10 of the Complaint. Respondent further asserted eight affirmative defenses.

On October 29, 2018, the Union filed an unfair labor practice charge against Respondent in case 5-CA-230128. The Union filed a first amended charge on April 2, 2019. On April 2, 2019, the Union filed an unfair labor practice charge against Respondent in case 5-CA-238809. The NLRB Region 5 office found merit to the Union's first amended charge in case 5-CA-230128 and the charge in case 5-CA-238809 and an Order Consolidating Cases and Consolidated Complaint was issued on April 30, 2019. Respondent filed its Answer to the Consolidated Complaint on May 14, 2019, denying in whole or in part, and/or claiming lack of knowledge to paragraphs 1, 4-5, 6(c), 7(b)-(c), 8(b), and 9-14 of the Complaint. Respondent further asserted nine affirmative defenses.

On May 10, 2019, the Union filed a second amended charge against Respondent in case 5-CA-216482, second amended charge in 5-CA-230128, and first amended charge in 5-CA-238809. The Union filed a third amended charge in case 5-CA-216482 on June 2, 2019. The NLRB Region 5 office found merit to the Union's third amended charge and issued an Order Consolidating Cases and First Amended Consolidated Complaint on June 6, 2019. Respondent filed its Answer to the Amended Consolidated Complaint on June 10, 2019, denying in whole or in part, and/or claiming lack of knowledge to paragraphs 1, 2(b), 4-5, 6(c), 7(b)-(c), 8(b), and 9-14 of the Complaint. Respondent further asserted nine affirmative defenses.

This matter is scheduled for hearing beginning June 18, 2019. In relation to the allegations set forth in the Consolidated Complaint, CGC issued a subpoena *duces tecum*, number B-1-15CDYGGZ (the "Subpoena") to Respondent. A courtesy copy was provided on Respondent's counsel on May 31, 2019. Official service was made by hand-delivery on Respondent on June 6,

2019.¹ on October 4. *See* Subpoena, attached as **Exhibit A**. On June 5 and 10, the parties conferred telephonically about the scope of the Subpoena; the parties reached limited agreements as identified specifically below. The parties did not reach an agreement on Respondent's remaining objections, which are also addressed below.

II. APPLICABLE LEGAL STANDARD

The applicable test for determining the appropriateness of an administrative subpoena is: (1) whether the inquiry is within the authority of the issuing agency; (2) whether the request is too indefinite; and (3) whether the information sought is reasonably relevant. *See U.S. v. Morton Salt Co.*, 338 U.S. 632 (1950). Section 11(1) of the Act provides the Board and its agents broad authority, including the power to subpoena any evidence that relates to any matter under investigation or in question. *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 511 (4th Cir. 1996); *NLRB v. Steinerfilm, Inc.*, 702 F.2d 14, 15 (1st Cir. 1983); *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 114 (5th Cir. 1982). The Board's Section 11 subpoena power gives it the right to require production of evidence and testimony during formal hearings. *NLRB v. North Bay Plumbing*, 102 F.3d 1005, 1008 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, *supra*; *Link v. NLRB*, 330 F.2d 437, 440 (4th Cir. 1964). The Board's authority under Section 11 is interpreted to be as comprehensive as a civil litigant's right to discovery under the Federal Rules of Civil Procedure. *NLRB v. Interstate Material Corp.*, 930 F.2d 4, 6 (7th Cir. 1991).

Section 102.31 of the Board's Rules and Regulations provides that a subpoena may

¹ CGC initially sent the Subpoena to Respondent by certified mail, with a courtesy copy by email to Respondent's counsel. The postal service failed to deliver the Subpoena, so on June 6, 2019, CGC hand-delivered the Subpoena to Respondent.

be revoked if the evidence sought does not relate to any matter in question in the proceedings or does not describe with sufficient particularity the evidence whose production is required or if for any reason sufficient in law the subpoena is otherwise invalid. *See* Boards Rules and Regulations § 102.31(b); *see also U.S. v. Morton Salt Co. supra*; *NLRB v. Williams*, 396 F.2d 247, 249 (7th Cir. 1968). In objecting to a subpoena for the production of documents, the subpoenaed party cannot rely upon bare assertions in the broadest of terms. *NLRB v. Dutch Boy, Inc.*, 98 L.R.R.M. (BNA) 2396, 2398 (N.D. Okla. 1978), *affd.*, 606 F.2d 929 (10th Cir. 1979). Respondent must specifically identify why each objection has merit. Absent such specific showings, the documents must be produced. *Id.*

In its PRV, Respondent primarily asserts that the Subpoena requests: (1) are overbroad; (2) are unduly burdensome; (3) seek information covered by the attorney-client privilege; (4) seek information that is not relevant to this matter; (5) seek confidential information; and (6) the timing renders in unduly burdensome. In all respects, Respondent's contentions are without merit and CGC respectfully requests that the Administrative Law Judge deny the PRV because the Subpoena is tailored to seek information relevant to issues raised by the pleadings, and are not otherwise improper.

III. ANALYSIS OF EACH OBJECTION

Request No. 1: All documents submitted to Region 5 of the National Labor Relations Board by Respondents or its counsel during the investigation of case numbers 05-CA-216482, 05-CA-230128, and 05-CA-238809, including, but not limited to, position statements and any attachments.

Request No. 2: All documents showing the ownership and management of GWUH.

Respondent argues in its PRV that Request Nos. 1 and 2 are overbroad and unduly burdensome.

Request No. 1 seeks Respondent reproduce the documents it already produced to NLRB Region 5 during the Region's investigation. Request No. 1 also provides that in lieu of providing these documents, Respondent can stipulate to the authenticity of CGC's documents that Respondent already produced in this matter. This request cannot be overbroad or unduly burdensome as Respondent is aware of the scope of the request and has provided these documents previously to CGC.

Request No. 2 seeks documents that show what entities own The George Washington University Hospital (the "Hospital"), and whether any such entities are partnerships. This request pertains directly to paragraph 2 of the Complaint. The Hospital is the Employer in this matter and Respondent admitted in its Answer that certain entities are partners with a financial interest in the Hospital. Request No. 2 provides that Respondent can stipulate to the ownership and management of the Hospital, in lieu of production of documents. Otherwise, CGC maintains that the documents are relevant and should be produced.

For the foregoing reasons, we request that Respondent's PRV pertaining to Subpoena requests No. 1 and 2 be denied.

* * *

Request No. 5: Documents that show all wages, benefits, and other compensation paid to Respondents' Lead Negotiator and Counsel during the period covered by this subpoena.

Request No. 6: Documents that indicate or reflect Respondents' agreements and contracts, including documents showing the duties of Respondents' lead negotiator and counsel during the period covered by this subpoena.

Respondent argues in its PRV that Request Nos. 5 and 6 seek information covered by the attorney-client privilege. CGC alleged that Respondent's lead negotiator is a 2(13) agent of Respondent. Respondent has not stipulated or admitted Respondent's 2(13) status of its lead negotiators, Steven Bernstein. Accordingly, documents responsive to Request Nos. 5 and 6 are

relevant in determining the agency status of Mr. Bernstein under Section 2(13) of the Act. If Respondent is willing to stipulate to Mr. Bernstein's Section 2(13) status, it does not need to provide the documents.

* * *

Request No. 7: All collective-bargaining agreement(s) between any of the Respondents and the Union, including tentative agreements, letters of understanding, all memoranda of agreement, and all documentation extending the collective bargaining agreement, in effect during the period of time covered by this subpoena.

Request No. 8: All collective-bargaining proposals exchanged between any of the Respondents and the Union during the period covered by this subpoena, together with documents identifying the date of such proposals, the identity of the party who made each proposal, and all documents showing responses to the proposals.

Respondent argues in its PRV that Request Nos. 7 and 8 are overbroad and unduly burdensome to the extent that Respondent is required to provide all documents over a three-year period.⁴ Despite this burdensomeness assertion, Respondent has admitted to CGC that there is only *one* collective-bargaining agreement responsive to Request No. 7, and that Respondent has already produced to CGC during NLRB Region 5's investigation the majority of the proposals responsive to Request No. 8. CGC is agreeable to Respondent producing the few remaining proposals it did not produce during the investigation and stipulating to the authenticity of CGC's files with respect to the documents Respondent produced in the investigation.

* * *

Request No. 9 (a)-(c) and (i): All documents which in any way relate to any collective bargaining agreement negotiation meetings (the '**Bargaining Sessions**') between the Union and Respondents during the period of time covered by this subpoena, including, but not limited to:

⁴ CGC is providing its response to the PRV concerning Subpoena requests No. 7 and 8 out of an abundance of caution. CGC believes that Respondent agreed to produce the documents sought in response to Subpoena requests No. 7 and 8 and stipulate to the authenticity of the Region's files.

- a. Documents prepared by Respondents in anticipation of the Bargaining Sessions.
- b. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents and the Union concerning the Bargaining Sessions.
- c. Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondent's supervisors and agents concerning the Bargaining Sessions.
- i. All communications regarding collective-bargaining sent by or to representatives of Respondent, whether by telephone, in-person, or in writing.

Respondent argues in its PRV that Request No. 9(b) and (c) are overbroad and unduly burdensome to the extent that it seeks in person and verbal conversations. CGC has advised Respondent that it is seeking documents memorializing in person and verbal conversations (i.e. notes, email summaries, memo summaries, etc.) and that CGC is not asking Respondent to create something that doesn't otherwise exist.

Respondent further argues in its PRV that these requests are overbroad because it seeks e-mail, text and voice-mail communications from November 2016 through June 2019.

Respondent also argues that this request is unduly burdensome because there are allegedly thousands of emails that have to be reviewed in order to respond to this request. A party seeking revocation of a subpoena based on a claim that it is unduly burdensome has the burden of establishing that compliance with the subpoena is unreasonable, burdensome, or would cause undue hardship and expense. *See FTC v. Texaco, Inc.*, 555 F.2d 862 882 (D.C. Cir. 1977), *cert. denied*, 431 U.S. 974 (1977). This burden is not easily met. *EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 477 (4th Cir. 1986), *cert. denied*, 479 U.S. 815 (1986). The party seeking revocation must show that compliance with the subpoena "would seriously disrupt normal business operations." *Id.*; *see also EEOC v. Citicorp Diners Club, Inc.*, 985 F.2d 1036, 1040 (10th Cir. 1993); *NLRB v. G.H.R. Energy Corp.*, 707 F.2d 110, 113-14 (5th Cir. 1982). A party cannot refuse to comply with a subpoena seeking relevant information merely because compliance may require

the production of a large volume of documents. *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507, 513-14 (4th Cir, 1996); *G.H.R. Energy Corp.*, 707 F.2d at 113-14. To the contrary, it may be presumed that an entity that maintains a large volume of records is sufficiently equipped to locate and produce them. *Id.* Accordingly, Respondent's burden objection should be denied.

Finally, Respondent claims that this Request seeks privileged communications. Respondent has made only cursory assertions that the Subpoena request No. 9 calls for (unidentified) privileged information. But the party seeking revocation on such grounds must support its claim with a sufficient description of the nature of the information sought to enable the party seeking the information to make an informed response to the claim. *Transcor Inc.*, 212 FRD 588, 592 (2003); *Diamond State Ins. Co.*, 157 FRD 691, 697 (1994); *Century Management, LLC*, 2015 WL 3879631 (unpublished, June 2015) (denying PRV to revoke and clarifying as follows: "to the extent that the subpoena encompasses some documents that the Employer believes in good faith to be subject to the attorney-client privilege or attorney work product doctrine, this Order is without prejudice to the Employer's prompt submission of a privilege log identifying and describing each such document, providing sufficient detail to permit an assessment of the Employer's claim of privilege or protection, and the Employer is directed to produce all responsive documents not subject to any good faith claim of privilege or protection."). Additionally, Respondent should be compelled to produce all other relevant information as requested. CGC maintains that its request period, up to the date of the hearing, is sufficiently narrow to cover relevant documents, and does not place undue burden on Respondent. See, e.g., *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d at 513-14.

* * *

Request No. 10: The petition Respondents relied upon in withdrawing recognition from the Union

Request No. 11: All documents Respondents used to authenticate the signatures on the Disaffection Petition.

Request No. 12: All communications between Respondents and the Union related to the Disaffection Petition.

Request No. 13: For all Unit employees who signed the Disaffection Petition, please provide all documents identifying for each employee:

- a. Date of hire;
- b. Job position at time of hire;
- c. Date each employee was eligible to join the Union;
- d. Job position at time employee purported to sign the Disaffection Petition (the date listed as the signature date for each employee on the Disaffection Petition);
- e. Personnel file;
- f. Letter(s) from the Respondents to the Unit employees offering employment, including all letters setting forth the terms of employment.

Respondent argues in its PRV that Request Nos. 10-13 seek documents that are not relevant to the Complaint allegations. Respondent correctly states that CGC alleges in the First Amended Consolidated Complaint that Respondent withdrew recognition from the Union. Subpoena Request Nos. 10-13 specifically relate to that withdrawal of recognition. Respondent told NLRB Region 5 during the investigation that it withdrew recognition based upon a disaffection petition signed by the Unit employees. Respondent reiterates this claim in paragraph 8(b) of its Answer to the Complaint. Given Respondent's defense to the withdrawal of recognition, all documents related to that disaffection petition are at least potentially relevant, whether they occurred before or after that withdrawal.

Requests 10 and 11 specifically relate to Respondent's verification of the disaffection petition. Request 12 specifically relates to Respondent's communications with the Union concerning the disaffection petition and withdrawal of recognition. Request 13 specifically relates to whether Respondent could rely upon the disaffection petition because the documents sought in a-d are necessary for CGC to verify the employees who signed the petition were in the Unit at the time they signed the petition.

Respondent argues in its PRV that Request No. 13(e) is also overbroad because it seeks an entire personnel file of employees. Contrary to Respondent, CGC maintains that the personnel files are relevant to evaluating the defenses raised by Respondent. CGC has invited Respondent to provide CGC with the categories of documents that are in the personnel files so CGC is able to determine which categories are not relevant to this matter. Respondent has not done so as of this filing. Without more information that only Respondent has, CGC is not able to further tailor its request.

Respondent further argues in its PRV that Request Nos. 11-13 are overbroad and unduly burdensome to the extent that it seeks all documents for a three-year period. In these requests, CGC is looking for documents that will establish, for each relevant employee, each of the categories of information listed. These documents are relevant to Respondent's anticipated defenses, as well as its admitted withdrawal of recognition, which it claims was based on a disaffection petition. Additionally, this request is not overburdensome, as the time period is by its terms limited to Respondent's conduct pertaining to the disaffection petition, and the scope limited to those employees who were employed at the time Respondent reviewed the petition. With respect to Request 13, CGC has explained to Respondent that it is seeking only one document for each employee to confirm the date of hire, one for the date each employee was eligible to join the Union, one for the job position at the time each employee purported to sign the disaffection petition, one letter offering employment with the terms of employment, and the personnel file. The personnel file is addressed above, but with respect to the other categories, CGC is seeking a total of four documents per employee. Since only 81 employees in the Unit signed the disaffection petition, CGC is seeking 324 pieces of paper (exclusive of the personnel file) responsive to this

request, not the thousands of documents Respondent claims are responsive. Accordingly, there is no merit to Respondent's contentions that this request is overbroad or unduly burdensome.

For the reasons set forth above, Respondents objections to Subpoena requests Nos. 10-13 should be denied.

* * *

Request No. 14: All documents or bargaining briefs the Respondents disseminated to the Unit concerning: the status of bargaining; the Respondent's bargaining proposals; or the Union's bargaining proposals.

Respondent argues again in its PRV that Request No. 14 is overbroad and unduly burdensome to the extent that it seeks all documents for a three-year period. CGC also asserts that the majority of these documents have already been produced to the CGC during the NLRB Region 5 investigation. CGC is seeking the remaining bargaining briefs and for Respondent to stipulate to the authenticity of CGC's files with respect to these documents. CGC understands from conferring with Respondent, that Respondent is agreeable to producing the rest of the responsive documents to this request and stipulating to the authenticity of the other responsive documents already in CGC's files.

* * *

Request No. 15: Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, from the period of September 1, 2018 through December 31, 2018: Unit employees wage rates; Unit employees compensation structure; and Unit employees' transit benefits.

Paragraph 9 of the First Amended Consolidated Complaint alleges: About November 1, 2018, Respondent unilaterally implemented changes to the following matters: (1) wage rates; (2) a compensation structure; and (3) transit benefits. Subpoena request No. 15 specifically is related to paragraph 9 of the First Amended Consolidated Complaint and is limited to a four-month period, and therefore is not overbroad.

Respondent also claims, without evidence, that this wage information requested in 15(a) is confidential because it seeks salary information of employees. Respondent has provided no information to support a claim that Unit employees' salaries constitute confidential information.

* * *

Request No. 17:⁵ For all employees that on October 25, 2018 were employed in the following departments of GWUH: Environmental Services, Linen Services, Ambulatory Care Center and Food Services Departments, provide: (a) Payroll records from period of March 1, 2018 through October 25, 2018; (b) Offer of hire letters; (c) Promotion letters; (d) demotion letters.

Respondent argues that this request is not relevant to this action. The documents sought in the Subpoena are relevant to determine the validity, accuracy, credibility, and reliability of the disaffection petition that Respondent says it relied on when it withdrew recognition of the Union. Additionally, the requested information is directly relevant to determine the accuracy of Respondent's assessment of each employee's bargaining unit status during the relevant period of time. Accordingly, Respondent should be compelled to provide responsive information as requested.

Respondent further argues that Unit employees' wages are confidential. Again, as set forth above, Respondent has not met its burden to claim confidentiality to Unit employee wages. Accordingly, this objection should be denied.

* * *

Request No. 18: Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents' supervisors and agents concerning the Disaffection Petition.

⁵ Respondent's PRV does not make an argument concerning Subpoena request No. 16. After conferring with Respondent's counsel, CGC is under the impression that Respondent intends to stipulate to the authenticity of the documents in CGC's files that are responsive to this request.

Request No. 19: Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents and Eugene Smith or any other employee of GWUH concerning the Disaffection Petition.

Request No. 20: Documents memorializing, showing, containing, relating to, or reflecting, in whole or in part, communications between Respondents' supervisors and agents related to the Respondents' validation of signatures on the Disaffection Petition.

Request No. 21: All documents used or considered by Respondents in the validation of the Disaffection Petition.

Respondent argues in its PRV that Request Nos. 18-21: 1) are overbroad and unduly burdensome to the extent that they seek all documents for a three-year period; and 2) seek documents that are not relevant to the Complaint allegations. The period covered by the subpoena begins at the time the parties commenced bargaining and ends on the day of the hearing. The requests are sufficiently narrow in scope, as they seek only documents specifically relevant to Respondent's affirmative defense that it was privileged to withdraw recognition on October 26, 2018. Any responsive documents within this period are relevant, and should be produced. Respondent further objects in its PRV with respect to Request Nos. 18 and 20 to the definitions of documents and communications requiring e-mail, text, and voice-mail communications to respond to this subpoena. Respondent objects to production of responsive documents for communications by and to its lead negotiator Steven Bernstein claiming both overbreadth and privilege. Respondent has argued that, at the very least, the subpoena should be revoked as to any responsive communications that occurred after the withdrawal of recognition. Counsel for the General Counsel strongly urges the Administrative Law Judge to reject this argument and to order production of all responsive documents within the period covered by the subpoena. The information sought in this request is necessary for the CGC to test the validity of the disaffection petition Respondent claims to have relied on in withdrawing recognition. CGC has the right to test the credibility of the signatures' authenticity on the petition and the process

Respondent used to determine that the Union was no longer supported by a majority of the bargaining unit employees. Respondent's lead negotiator, as well as several other supervisors and agents were involved in Respondent's review of the disaffection petition. According to Respondent, they performed this review immediately after receiving the disaffection petition and withdrew recognition the next morning. If Respondent never discussed the disaffection petition again, then it should argue that there are no responsive documents. Instead, Respondent seeks limitations on production beyond a certain date and with respect to communications involving its lead negotiator. Such limitations would be improper to impose because they would compromise the General Counsel's duty to test the validity of Respondent's defenses.

The essence of the Complaint allegations is that Respondent committed unfair labor practices that would tend to cause disaffection among unit employees, withdrew recognition from the Union while those unfair labor practices were still ongoing, and then made unilateral changes to unit employees' working conditions. CGC intends to prove those allegations at trial and obtain an affirmative bargaining order, even assuming that the disaffection petition provided Respondent with objective evidence that the Union no longer enjoyed majority support. Nonetheless, the burden remains on Respondent to prove it relied on a valid basis for its withdrawal of recognition. To the extent Respondent possesses documents relevant to this affirmative defense, that relevance cannot be subject to an expiration date. To grant a revocation such as that requested by Respondent would be to permit a party to withhold evidence potentially damaging to its affirmative defense for the sole reason that it is not sufficiently close in time to the unfair labor practices allegedly

committed by the same party. This cannot be reconciled with the need to ensure that Respondent's conduct, whether intentional or otherwise, did not improperly disenfranchise unit employees.⁶

Finally, CGC notes that, were this a case solely alleging withdrawal of recognition absent evidence of a union's loss of majority support, it seems unlikely that Respondent could successfully argue that a subpoena seeking documents relevant to its defenses should be restricted to an end date other than the hearing date. CGC contends that, if there can be any reasons to so restrict a subpoena in a case alleging that employee disaffection was caused by an employer's unfair labor practices, Respondent has not raised any of them here.

CGC submits that it is entitled to all of Respondent's pre- and post- disaffection petition submission communications relating to the petition including Respondent's involvement and knowledge of the petition creation, submission and verification. CGC believes the documents sought in this request are critical to this case as the documents relate to Respondent's decision to withdraw recognition from the Union and further relates to all facts that Respondent considered in deciding to withdraw recognition from the Union. Accordingly, Respondent's objection to these subpoena requests should be denied.

* * *

Request No. 22: All documents relied on by Respondents in support of its Affirmative Defense No. 1.

⁶ In cases where the evidence establishes taints of disaffection, it is nonetheless proper for the Administrative Law Judge to consider whether the respondent has met its burden to show it was privileged to withdraw recognition even absent the taint. See, e.g., *Ambassador Services, Inc.*, 361 NLRB 939, at fn.1 (2014), reaffirming vacated decision in 358 NLRB 1172 (2012). There, the ALJ wrote: "I am mindful that no analysis relating to majority status is applicable in cases where the expression of employee disaffection with a union is tainted by the involvement of management. Nevertheless, insofar as any reviewing authority should alter my finding that the decertification petition was tainted, it is appropriate to note that the Respondent did not establish that a majority of employees in the unit signed the decertification petition." 358 NLRB 1172, 1182.

Request No. 23: All documents relied on by Respondents in support of its Affirmative Defense No. 2.

Request No. 24: All documents relied on by Respondents in support of its Affirmative Defense No. 3.

Request No. 25: All documents relied on by Respondents in support of its Affirmative Defense No. 4.

Request No. 26: All documents relied on by Respondents in support of its Affirmative Defense No. 5.

Request No. 27: All documents relied on by Respondents in support of its Affirmative Defense No. 6.

Request No. 28: All documents relied on by Respondents in support of its Affirmative Defense No. 7.

Request No. 29: All documents relied on by Respondents in support of its Affirmative Defense No. 8.

Request No. 30: All documents relied on by Respondents in support of its Affirmative Defense No. 9.

Respondent objects in its PRV to Subpoena request Nos. 22-30 as being overbroad and unduly burdensome, seeking documents over a three-year period. Surprisingly, Respondent also claims that Subpoena request Nos. 22-28 are not relevant to this matter. As these requests relate to Respondent's affirmative defenses of this matter, the requests are unquestionably relevant. The documents sought also could not be overbroad or unduly burdensome as presumably Respondent has to compile these documents in order to mount support of its affirmative defenses. Accordingly, Respondent's objections to these requests should be denied.

**IV.
CONCLUSION**

For the reasons set forth above, Respondent's Petition to Revoke should be denied.

Respectfully submitted,

/s/ Barbara Duvall

June 12, 2019
Date

Barbara Duvall, Field Attorney
Andrew Andela, Field Attorney
Counsel for the General Counsel
NLRB, Region 5
100 S. Charles St, Tower II, Ste 600
Baltimore, MD 21201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June 2019, the foregoing Opposition to Respondent's Petition to Revoke Subpoena *Duces Tecum* No. B-1-15CDYGZ was sent by electronic mail, upon the following persons:

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

DISTRICT HOSPITAL PARTNERS, L.P. D/B/A THE
GEORGE WASHINGTON UNIVERSITY HOSPITAL,
A LIMITED PARTNERSHIP, AND UHS OF D.C.,
INC., GENERAL PARTNER

and

Cases 5-CA-216482
5-CA-230128
5-CA-238809

1199 SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS EAST,
MD/DC REGION A/W SERVICE EMPLOYEES
INTERNATIONAL UNION

SECOND AMENDED CONSOLIDATED COMPLAINT

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 5-CA-216482, filed by 1199 Service Employees International Union, United Healthcare Workers East, MD/DC Region a/w Service Employees International Union (the Charging Party) against District Hospital Partners, L.P. d/b/a The George Washington University Hospital, a Limited Partnership, and UHS of D.C., Inc., General Partner (Respondent), in which a Complaint and Notice of Hearing issued on September 25, 2018, is consolidated with Case 5-CA-230128 and Case 5-CA-238809, filed by the Charging Party against Respondent.

This Order Consolidating Cases, Second Amended Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations and alleges Respondent has violated the Act as described below.

1. The charges in the above cases were filed by the Charging Party, as set forth in the following table, and served upon Respondent, on the dates indicated, by U.S. Mail:

Case No.	Amendment	Date Filed	Date Served
(a) 5-CA-216482		March 12, 2018	March 14, 2018
(b) 5-CA-216482	First Amended	September 7, 2018	September 10, 2018
(c) 5-CA-216482	Second Amended	May 10, 2019	May 13, 2019
(d) 5-CA-216482	Third Amended	June 2, 2019	June 4, 2019
(e) 5-CA-230128		October 29, 2018	October 31, 2018
(f) 5-CA-230128	First Amended	April 2, 2019	April 2, 2019
(g) 5-CA-230128	Second Amended	May 10, 2019	May 14, 2019
(h) 5-CA-238809		April 2, 2019	April 2, 2019
(i) 5-CA-238809	First Amended	May 10, 2019	May 13, 2019

2. (a) At all material times, Respondent has been a limited partnership with an office and place of business in Washington, D.C. (Respondent's facility), and has been engaged in providing short-term acute medical care to the general public.

(b) At all material times, District Hospital Partners, L.P. has been a limited partnership doing business as The George Washington University Hospital, and UHS of D.C., Inc. has been the general partner.

(c) In conducting its operations during the 12-month period ending March 31, 2019, Respondent derived gross revenues in excess of \$250,000.

(d) During the period of time described above in paragraph 2(c), Respondent received goods and materials valued in excess of \$5,000 directly from points outside of Washington, D.C.

(e) During the period of time described above in paragraph 2(c), Respondent has conducted its business operations described above in paragraph 2(a), in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

(f) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a healthcare institution within the meaning of Section 2(14) of the Act.

3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- (a) Katina Ford - Supervisor, Environmental Services Department
- (b) Tracey Leonard - Senior Human Resources Generalist
- (c) Makita Miller - Assistant Director for George Washington University
- (d) Kim Russo - Chief Executive Officer
- (e) Jeanie Schmid - Human Resources Vice President/Corporate Universal Health Services Office
- (f) Robert Trump - Director, Food Services Department

5. (a) At all material times, an Unnamed Agent held the positions of Respondent's Lead Negotiator and Counsel and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

(b) At all material times, Unnamed Agents held the positions of Respondent's attorneys and have been agents of Respondent within the meaning of Section 2(13) of the Act.

6. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and regular part-time employees of [Respondent] in the Environmental Services, Linen Services, Ambulatory Care Center and Food Services Departments of George Washington University Hospital.

(b) From a time presently unknown to the undersigned until October 26, 2018, Respondent recognized the Charging Party as the exclusive collective-bargaining representative of the Unit. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from December 20, 2012 through December 19, 2016.

(c) At all material times, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

7. (a) At various times from about November 21, 2016 to October 26, 2018, Respondent and the Charging Party met for the purposes of negotiating a successor collective-bargaining agreement to the agreement described above in paragraph 6(b).

(b) During the period of time described above in paragraph 7(a), Respondent bargained with no intention of reaching agreement by:

(1) simultaneously maintaining and adhering to bargaining proposals that provide the Unit with fewer rights than afforded to them without a collective-bargaining agreement, such as a restrictive grievance-arbitration procedure that does not include binding arbitration, a no-strike provision, and an expansive management's right clause;

(2) engaging in regressive bargaining by proposing that discharges be subject to the grievance-arbitration procedure, and then later proposing that the grievance procedure culminates in non-binding mediation;

(3) simultaneously maintaining and adhering to a bargaining proposal that deletes a longstanding union security clause provision; and

(4) simultaneously maintaining and adhering to wage proposals that give Respondent unfettered discretion.

(c) By its overall conduct, including the conduct described above in paragraph 7(b), Respondent has failed and refused to bargain in good faith with the Charging Party as the exclusive collective-bargaining representative of the Unit.

8. (a) About October 26, 2018, Respondent withdrew its recognition of the Charging Party as the exclusive collective-bargaining representative of the Unit.

(b) Since about October 26, 2018, Respondent has failed and refused to recognize and bargain with the Charging Party as the exclusive collective-bargaining representative of the Unit.

9. (a) About November 1, 2018, Respondent unilaterally implemented changes to the following matters:

- (1) wage rates;
- (2) a compensation structure; and
- (3) transit benefits.

(b) The subjects set forth above in paragraph 9(a) relate to the wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

10. Respondent engaged in the conduct described above in paragraph 9 without affording the Charging Party an opportunity to bargain with Respondent with respect to this conduct.

11. About November 1, 2018, Respondent, in a memorandum to employees, told employees they did not receive benefits because of the Charging Party.

12. On or about June 6 and 7, 2019, Respondent, by unnamed agents, in administrative offices located at Respondent's facility, coercively interrogated employees about matters that are the subject of unfair labor practice proceedings.

13. By the conduct described above in paragraphs 7(b), 7(c), 8, 9(a) and 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

14. By the conduct described above in paragraphs 11 and 12, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

15. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

As part of the remedy for the unfair labor practices alleged above in paragraphs 7(b), 7(c), and 13, the General Counsel seeks an Order requiring Respondent to make whole: (1) the Charging Party for all costs and expenses incurred during negotiations; and (2) employee negotiators for any earnings and or leave lost while attending bargaining sessions.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before July 9, 2019, or postmarked on or before July 8, 2019.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users

that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

Dated at Baltimore, Maryland this 25th day of June 2019.

(SEAL)

/s/ NANCY WILSON

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Attachments